Jan 5. 1887

Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1131.

THE MAYOR & COUNCIL OF THE CITY OF LOUISIANA, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. THOMAS J. WOOD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 20, 1880.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the March term, 1880, thereof, between The United States ex rel. Thomas J. Wood, relator, and the Mayor and Council of the city of Louisiana, respondents, a manifest error hath happened to the great damage of the said respondents, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 15th day of July, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, eastern district of Missouri.
By A. P. SELBY,
Deputy.

Allowed by—

GEO. W. McCRARY, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 1st day of September, A. D. 1880.

[SEAL.] M. M. PRICE,
Clerk of said Court.
By A. P. SELBY,
Deputy.

(Indorsed:) No. 1184. United States circuit court, eastern district of Missouri. U. S., ex rel. Thos. J. Wood, vs. City of Louisiana. Writ of error to the circuit court of the United States, E. D. of Missouri.

REC. 1131—1

3 The United States of America to the United States ex rel. Thomas J. Wood, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the Mayor and Council of the city of Louisiana are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable George W. McCrary, judge of the circuit court of the United States for the eastern district of Missouri, this 15th day of July, in the year of our Lord one thousand eight hundred and eighty.

GEO. W. McCRARY,
Judge United States Circuit Court, eastern district of Missouri.

Service of citation waived Aug. 5th, 1880.

DRYDEN & DRYDEN,
For Relator.

(Indorsed:) 1184. United States circuit court, eastern district of Missouri. U. S., ex rel. Thomas J. Wood, vs. City of Louisiana. Citation. Filed July 16, 1880. M. M. Price, clerk.

4 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the 18th day of April, A. D. 1879, there was filed in said circuit court of the United States for the eastern district of Missouri, a petition for mandamus in the case of the United States, ex rel. Thomas J. Wood, against the Mayor and Council of the city of Louisiana. And thereupon an alternative writ of mandamus was ordered to issue in said cause, and on May 10th, 1879, said writ was issued. And afterwards, on the 25th day of September, 1879, a return was filed to said writ, to which return a demurrer was interposed on the 26th day of September, 1879.

And afterwards, to wit, on the 15th day of December, 1879, at the regular stated September term, 1879, of said circuit court, the following amended petition for a writ of mandamus was filed in the above cause, to wit:

5 *Amended petition.*

In the circuit court of the United States for the eastern dist. of Missouri.

THOMAS J. WOOD, PLAINTIFF,
vs.
CITY OF LOUISIANA, DEFENDANT.

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri.

The amended petition of Thomas J. Wood, leave to file same being

first had and obtained, respectfully shows to your honors that he is a citizen of the State of Ohio, and that the city of Louisiana is a municipal corporation, duly incorporated, organized, and existing under the laws of the State of Missouri, and a citizen of said State; that the affairs of said city are managed by a city council composed of eight councilmen and presided over by the mayor of said city; that John C. Rose, who is a citizen of said State of Missouri, is now the mayor of said city duly elected and qualified to act as such for a term to expire on the 15th day of March, 1881, and that Oliver C. Bryson, William F. Hill, H. P. Brown, Nimrod G. Ferguson, William W. Anderson, R. J. Foster, Andrew J. McCune, and Samuel Reid, all of whom are citizens of said last named State, are now councilmen of said city and together compose the city council thereof; that the said city council have power and it is their duty to levy and collect taxes upon all property
6 within the limits of said city taxable under the laws of the State of Missouri for State purposes, and to appropriate money and provide for the payment of the debts of said city, and to that end to pass all ordinances and resolutions necessary to be passed and to do and take all other acts and proceedings necessary to be done or taken in order to so levy and collect said taxes and appropriate the moneys of said city and provide for the payment of its debts, and that it is the duty of said mayor, and he has the power to preside at the meetings of said council, and in case of a tie to give the casting vote therein, and to sign all ordinances and resolutions passed by said council.

Your petitioner further shows that on the 23rd day of February, 1878, he instituted his certain action in this court against said city of Louisiana, for the recovery of divers large sums of money due to him and demandable of the said city, and that in the due prosecution of said action your petitioner afterwards, on the seventh day of December, A. D. 1878, recovered a judgment in this court against said city of Louisiana for the sum of twenty-two thousand two hundred and twenty-six $\frac{40}{100}$ dollars, the debt and damages demanded in said action and one hundred and ninety-six $\frac{76}{100}$ dollars for his costs of suit; that the said judgment was recovered in an action by petitioner for money of peti-
7 tioner had and received by said city to his use, subsequent to the 12th day of March, 1870; that prior to the commencement of said action, to wit, on the 22d day *day* of February, 1878, your petitioner demanded of the said city of Louisiana, the payment of the sums of money so recovered in said action; that after the recovery of said judgment, namely, on the 17th day of January, 1879, a writ of execution was issued out of the clerk's office of this court pursuant to law, which was made returnable to the March term 1879 of this court, and was directed to the marshal of the United States for the said district, commanding him to cause the said judgment of debt, damages, and costs to be made out of the property, real and personal, of said city; that at the return day of said writ, namely, on the 17th day of March, 1879, it was by said marshal duly returned into court unsatisfied as to all of said debt, interest, and costs, because he the said marshal had not found and could not find in said district any property, real or personal, of said city on which to levy and make said debt or any of it.

Your petitioner further shows that more than twelve months have elapsed since the said debt so recovered by said judgment became due and payable, and since demand of payment thereof was made as aforesaid, and yet said city council has failed to make any provision whatever for the payment in whole or in part of said debt; that there
8 are within said city divers persons, inhabitants thereof, possessed

of divers property, real and personal, subject to taxation by said city council, and that there are also divers pieces of property situated within the limits of said city, owned by persons not inhabitants thereof, which is also subject to taxation by said city council, and that the property in said city made taxable by law for State purposes and subject to taxation as aforesaid by said city council is of the aggregate value of nine hundred and seven thousand two hundred dollars, and that taxes may and can be levied upon and collected from all of said property, in order to pay the said judgment debt and costs; that said judgment debt, with lawful interest thereon at the rate of six per centum per annum from the rendition of said judgment, and said costs, remain wholly unpaid, and that no steps have been taken by the defendants or either of them nor by the predecessors of them, or any of them, in their respective offices, to pay said debt or costs, or to levy any tax to pay the same.

Wherefore your petitioner prays your honors to grant unto him a writ of mandamus, to be issued out of your honorable court, returnable at as early a day as to your honors may seem meet, directed unto said John C. Rose, mayor of said city, and to his successors from time to time
9 in his said office of mayor, and to the said Bryson, Hill, Brown, Ferguson, Anderson, Foster, McCune, and Reid, councilmen, and to the successors from time to time in their said offices of councilmen, of them and of each of them, commanding them, and the successors of them, respectively, in their said respective offices, to levy and collect upon and from all property, real and personal, subject to taxation by law for State purposes within said city, a special tax sufficient to fully pay and satisfy the whole of the said judgment debt and lawful interest thereon, and the costs of said suit, and also the costs made upon said execution and of this mandamus proceeding, and the same as and when collected to apply, appropriate, and pay over to your petitioner in discharge of his said debt, interest, and costs; and to that end to hold and ttend upon all such meetings of said council, whether special or stated, nd thereat to propose, vote for, adopt, and pass all such ordinances s may be necessary to be passed in order to the proper levying, collecting, and appropriating of said special tax, and also to do and take all such other acts and proceedings as may be necessary to be done or aken in order speedily to cause the said special tax to be levied, collected, appropriated, and paid over to petitioner in satisfaction of his said debt and costs, and that he may have all such other and further orders in the premises as may be necessary and the circumstances may require.

DRYDEN & DRYDEN,
10 *Att'ys for Petitioner.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

John W. Dryden, of lawful age, being duly sworn, upon his oath says that he is one of the attorneys of the above-named petitioner, Thomas J. Wood; that he has read the foregoing-amended petition which was subscribed by him, and that the matters therein stated he believes to be true.

JOHN W. DRYDEN.

Sworn to and subscribed before me this day of December, A. D. 1879.

And afterwards, to wit, on said 15th day of December, A. D. 1879, the following proceedings were had of record, to wit:

Order for writ to issue.

UNITED STATES, EX REL. THOMAS J. WOOD, RELATOR,
vs. } 1184.
MAYOR AND COUNCIL OF THE CITY OF LOUISIANA, RESPONDENTS.

Now comes the relator, Thomas J. Wood, by Messrs. Dryden and Dryden, his attorneys, and moves the court to recall the alternative writ of mandamus heretofore issued herein, and for leave to file an amended petition; which motion, being heard, is granted by the court; and thereupon the court orders that said alternative writ be recalled, and said relator files his amended petition, praying for a writ of mandamus against John C. Rose, mayor, and Oliver C. Bryson, William F. Hill, H. P. Brown, Nimrod G. Ferguson, William W. Anderson, R. J. Foster, Andrew J. McCune, and Samuel Reid, councilmen of the said city of Louisiana, and their successors in office, commanding them to levy and collect a special tax in order to pay the judgment for twenty-two thousand two hundred and twenty-six & $\frac{40}{100}$ dollars rendered in favor of said relator and against said city on the 7th day of December, 1878, and the costs of his suit and of his petition for mandamus; and said petition having been heard and considered by the court, and the court be-
11 ing fully advised in the premises, it is ordered that an alternative writ of mandamus as prayed in said petition do issue, and that the said writ be made returnable on the 22nd day of January, 1880.

And afterwards, to wit, on the 18th day of December, A. D. 1879, there was issued out of the clerk's office of the circuit court of the United States for the eastern district of Missouri, an alternative writ of mandamus in said cause, which said writ is in the words and figures following, to wit:

Alternative writ of mandamus.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to the mayor and city council of the city of Louisiana, greeting:

Whereas it has been suggested to our circuit court of the United States for the eastern district of Missouri, that Thomas J. Wood, the relator, is a citizen of the State of Ohio; that the city of Louisiana is a municipal corporation duly incorporated, organized, and existing under the laws of the State of Missouri, and a citizen of said State; that the affairs of said city are managed by a city council composed of eight councilmen and presided over by the mayor of said city; that John C. Rose, who is a citizen of said State of Missouri, is now the mayor of said city, duly elected and qualified to act as such, for a term to expire on the 15th day of March, 1881; and that Oliver C. Bryson, William F. Hill, H. P. Brown, Nimrod G. Ferguson, William W. Anderson, R. J. Foster, Andrew J. McCune, and Samuel Reed, all of whom are citizens of said last-named State, are now councilmen of said city and together compose the city council thereof; that the said city council have power

12 and it is their duty to levy and collect taxes upon all property within the limits of said city taxable under the laws of the State of Missouri for State purposes, and to appropriate money and provide for the payment of the debts of said city, and to that end to pass all ordinances and resolutions necessary to be passed, and to do and take all other acts and proceedings necessary to be done or taken in order to so levy and collect said taxes and appropriate the moneys of said city and provide for the payment of its debts, and that it is the duty of said mayor, and he has the power, to preside at the meetings of said council, and in case of a tie to give the casting vote therein, and to sign all ordinances and resolutions passed by said council; that on the 23rd day of February, 1878, the said relator commenced his certain action in our said circuit court against said city of Louisiana for the recovery of divers large sums of money due to him and demandable of the said city, and that in the due prosecution of said action on the seventh day of December, A. D. 1878, he recovered a judgment in this court against said city of Louisiana for the sum of twenty-two thousand two hundred and twenty-six $\frac{4}{100}$ dollars, the debt and damages demanded in said action, and one hundred and ninety-six $\frac{76}{100}$ dollars for his costs of suit; that the said judgment was recovered in an action by relator for money of relator had and received by said city to his use subsequent to the 12th day
13 of March, 1870; that prior to the commencement of said action, to wit, on the 22nd day of February, 1878, the said relator demanded of the said city of Louisiana the payment of the sums of money recovered in said action; that after the recovery of said judgment, namely, on the 17th day of January, 1879, a writ of execution was issued out of the clerk's office of this court pursuant to law, which was made returnable to the March term, 1879, of this court, and was directed to the marshal of the United States for the said districts, commanding him to cause the said judgment, debt, damages, and costs to be made out of the property, real and personal, of said city; that at the return day of said writ, namely, on the 17th day of March, 1879, it was by said marshal duly returned into court unsatisfied as to all of the said debt, interest, and costs, because he, the said marshal, had not found and could not find in said district any property, real or personal, of said city on which to levy same and make said debt or any of it; that more than twelve months have elapsed since the said debt so recovered by said judgment became due and payable and since demand of payment of the same was so as aforesaid made, and yet the said city council of said city has failed to make any provision whatever for the payment, in whole or in part, of said debt; that there are within said city divers persons, inhabitants thereof, possessed of divers property, real and personal, subject to taxation by said city council, and that there are also divers pieces of property situated within the
14 limits of said city, owned by persons not inhabitants thereof, which is also subject to taxation by said city council, and that the property in said city made taxable by law for State purposes and subject to taxation as aforesaid by said city council is of the aggregate value of $907,200 dollars, and that taxes may and can be levied upon and collected from all of said property in order to pay the said judgment debt and costs; that said judgment debt, with lawful interest thereon at the rate of six per centum per annum from the rendition of said judgment, and said costs remain wholly unpaid, and that no steps have been taken by the respondents, or either of them, nor by the predecessors of them or any of them, in their respective offices to pay said debt or costs or to levy any tax to pay the same.

Now, we being willing that due and speedy justice be done in the

premises, do command you, John C. Rose, mayor of said city of Louisiana, and Oliver C. Bryson, William F. Hill, H. P. Brown, Nimrod G. Ferguson, Wil iam W. Anderson, A. J. Foster, Andrew J. McCune, and Samuel Reid, councilmen of said city, and the successors from time to time in your said offices of you and each of you, to levy and collect upon and from all property, real and personal, subject to taxation by law for State purposes, within said city, a special tax sufficient to fully pay and satisfy the whole of the said judgment debt and lawful interest
15 thereon and the costs of said suit, and also the costs made upon said execution and of this mandamus proceeding, and the same as and when collected to apply, appropriate, and pay over to said relator in discharge of his said debt, interest, and costs, and to that end to hold and attend upon all such meetings of said council, whether special or stated, and thereat to propose, vote for, adopt, and pass all such ordinances as may be necessary to be passed in order to the proper levying, collecting, and appropriating of said special tax, and also to do and take all such other acts and proceedings as may be necessary to be done or taken in order speedily to cause the said special tax to be levied and collected, and appropriated and paid over to relator, in satisfaction of his said debt and costs, or that you show cause before this court, on the 22nd day of January, 1880, why you refuse so to do.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of December, A. D. 1879. Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] (Signed) M. M. PRICE. *Clerk*,
By T. L. CRAWFORD, *D. C.*

We, the above named, John C. Rose, mayor, & Oliver C. Bryson, Wm. F. Hill, H. P. Brown, Nimrod G. Ferguson, William W. Anderson, R. J. Foster, Andrew J. McCune, and Samuel Reid councilmen,
16 of the city of Louisiana, do hereby acknowledge to have been duly served with a copy of the above and foregoing writ, and, waiving all other and further service thereof, do hereby, by our attorneys, enter our appearance to said writ at the return-day thereof.

(Signed) WAGNER, DYER & EMMONS,
Atty's for said Mayor & Councilmen.

And afterwards, to wit, on the 2nd day of February, A. D. 1880, there was filed in the clerk's office of the United States circuit court for the eastern district of Missouri a return to the alternative writ of mandamus, in the words and figures following, to wit:

Return to alternative writ of mandamus.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of the United States for the eastern district of Missouri.

UNITED STATES EX REL. THOMAS J. WOOD
v.
MAYOR AND COUNCILMEN OF THE CITY OF Louisiana, respondents.

Respondents, for return to the alternative writ of mandamus herein

issued, admit that said relator, on the 7th day of December, 1878, recovered in this court a judgment against the city of Louisiana for the sum of $22,226.40; that execution has been issued upon said judgment and returned unsatisfied, and that the property in said city taxable for State purposes is of the value of $907,200, as stated in said alternative writ.

And respondents, for further return, say that by different sections of the charter of said city different modes are provided for reducing, paying off, and satisfying the indebtedness and liabilities of said
17 city and the interest due thereon, all of which were in force at the time of the making of the contracts upon which the said judgment of the relators is founded; but it is not provided in any part of said charter that a special tax may be levied and collected for the purpose of paying and satisfying, in one payment, any particular judgment against the said city; but that all the provisions of said charter above referred to intend and contemplate a gradual reduction and settlement of the liabilities of said city, and these respondents say that they cannot make a more definite and specific return to that portion of said alternative writ that charges that it is the duty of these respondents to make a sufficient levy to satisfy relator's judgment for the want in said writ of a more certain averment of the particular charter provision requiring these respondents to make such levy, collection, and payment.

And respondents, for further return to said alternative writ of mandamus, say that judgments have been rendered in this court and in the circuit court of Pike County, Mo. (including relator's judgment), amounting to the sum of one hundred thousand dollars or more, including interest and costs, a list of which is as follows:

Thomas J. Wood, relator,	judgment in this court, Dec. 7, 1878	$22,226 40
Abby W. Goddard et al.,	do. do. do. do. do. do. do.	2,117 25
George Corning	do. do. do. do. do. do. do.	4,187 75
E. W. Hendrick,	do. do. do. do. do. do. do.	3,880 00
Green Erskine,	judgment Pike cir. court, March 17, 1879	10,582 44
David Thomas,	do. do. do. do. do. do. do	1,073 28
George G. Cole,	do. do. do. do. do. do. do.	1,073 28
18 Jno. C. H. D. Block,	do. do. do. do. do. do. do.	3,219 75
Henry Cornett,	do. do. do. do. do. do. do.	2,146 50
John Eschman,	do. do. do. do. do. do. do.	2,146 50
John G. Grosser,	do. do. do. do. do. do. do.	2,146 50
Charles Socker,	do. do. do. do. do. do. do.	3,219 75
F. E. Schmieding,	do. do. do. do. do. do. do.	4,293 00
John G. Nulsen,	do. do. do. do. do. do do.	5,366 25
A. J. P. Garesche et al.,	do. do. do. do. do. do. do.	5,366 25
Mary A. Leslie et al.,	do. do. do. do. do. do. do.	5,366 25
Walter A. Scott,	do. do. do. do. do. do. do.	3,219 75
Uriel Griffith,	do. do. do. do. do. do. do.	3,302 07
Wm. Herndon,	do. do. do. do. do. do. do.	3,499 41
Wm. C. Prewett,	do. do. do. do. do. do. do.	3,381 27

And these respondents say, that if any of the above-named plaintiffs are entitled to have satisfaction of their said judgments by a levy and collection of taxes in the manner demanded by said relator, then all of said plaintiffs are entitled thereto equally with the said relator; but these respondents deny that the said relator is entitled to have any levy of taxes made for the purpose of satisfying in full his judgment of $22,226.40; deny that these respondents, the mayor and council, of the city of Louisiana, have any authority to make any levy and collection of taxes for such purpose, and aver that whatever authority is vested in them in this respect, if any, must be exercised by these respondents in their discretion for the benefit of a particular class of creditors within

the limits of the charter provision applicable to such class and not for the especial benefit of one creditor to the exclusion of others.

19 And these respondents further aver that the levy of a tax sufficient to satisfy in full the judgment of said relator with interest and costs, and the costs of this mandamus proceeding would be largely in excess of any special levy authorized by the said city charter for any purpose and in direct conflict with both the letter and spirit of the same.

And these respondents, for further return to said alternative writ of mandamus, say that in pursuance of the law, and the provisions of the charter of said city of Louisiana, the city council of said city have provided by ordinance for the levy and collection of all taxes required and provided by law for the payment of the current expenses of said city and for the levy and collection of a tax of one per centum per annum upon the value of all property within said city made taxable by the laws of this State for the purpose of paying off the debts and liabilities of said city lawfully contracted; that all of said taxes so required to be levied and collected have been by the mayor and council of said city caused to be levied and collected upon all property in said city made taxable by law for State purposes, and that the money collected therefrom has been, and is being duly appropriated to the payment of the current expenses and the debts and liabilities of said city in the manner required by the charter and ordinances of the said city.

And these respondents say that they have made and caused to be made, up to the date of making this return, the levy of all taxes

20 required to be made and levied by the said city charter or any law of this State, or ordinance of said city for the purposes aforesaid, and have performed all other duties required of them by law, in relation thereto; and having thus exhausted all their authority in this respect, say, that they are prohibited from making or causing to be made any further levy and collection of taxes in the premises until the time appointed by law and ordinance for making the next annual levy of taxes for said city.

Wherefore respondents pray to be hence dismissed with judgment for their costs.

(Signed) WAGNER, DYER & EMMONS,
Att'ys for said Mayor & City Council.

And afterwards, to wit, on the 7th day of February, A. D. 1880, there was filed in the clerk's office of the circuit court of the United States, for the eastern district of Missouri, a demurrer to return of respondents to alternative writ, in the words and figures following, to wit:

Demurrer to return of respondents to alternative writ.

In the circuit court of the United States for the eastern district of Missouri.

UNITED STATES, EX REL. THOMAS J. WOOD,
vs.
MAYOR & CITY COUNCIL OF CITY OF LOUISIANA. } No.

The plaintiff demurs to the return of the respondents filed herein on the 2d day of Feb'y, 1880, and for grounds of demurrer alleges:

1. That said return does not show any obedience by the respond-

21 ents of the mandate of the alternative writ issued herein.

2. That said return does not show facts sufficient to constitute a legal excuse for the failure of respondents to obey the said writ.

3. That although said return alleges that taxes have been levied and collected by respondents applicable to the payment of the debts and liabilities of said city, yet it does not appear therefrom that any part of the said taxes have been appropriated or applied to the payment of the said judgment in favor of the relator or any part thereof.

4. That under the provisions of the general laws of Missouri, it was and is the duty of respondents, and they have the power, to levy a special tax as commanded in the alternative writ sufficient to pay said judgment, and so to levy and collect the same at once. (Gen'l Stat's, 1865, p. 650, § 77, and Revised Stat's of 1879, p. 405, § 2415.)

5. That under the provisions of the charter of said city, which said charter is a public act (see Mo. Sess. Acts 1870, p. 399, § 8,) respondents have the power and it was and is their duty, in obedience to the order of this court and the mandate of said writ, to levy and collect taxes sufficient to pay said judgment and interest and costs, and to apply the same strictly to the payment thereof until same is fully paid and discharged; provided, however, that said taxes be not levied at a
22 greater rate than one per centum per annum upon the total assessed value of the property, real and personal, within said city subject to taxation for State purposes.

(Signed) DRYDEN & DRYDEN.
Att'ys for Pl'ff and said Relator.

And afterwards, to wit, at a regular stated term of the circuit court of the United States, for the eastern district of Missouri, the following proceedings took place in said cause, on Friday, the 9th day of April, A. D. 1880, to wit:

UNITED STATES, EX REL. THOMAS J. WOOD, relator, *vs.* MAYOR AND COUNCIL OF THE CITY OF LOUISIANA, respondents. } 1184.

Now come the parties, by their respective attorneys, and this cause came on for hearing upon the demurrer of the relator to the return of respondents to the alternative writ of mandamus herein; and upon certain questions of law arising upon said demurrer, the judges were divided and opposed in opinion.

It is now, therefore, ordered that the clerk of this court make out and certify to the next term of the Supreme Court of the United States a transcript of the record and proceedings in this cause.

And the said division of opinion, so filed as aforesaid, is in the words and figures following, to wit:

23 *Division of opinion.*

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of United States for the eastern district of Missouri.
March term, 1880.

UNITED STATES, EX REL. THOMAS J. WOOD, pl'ff,
v.
MAYOR AND COUNCIL OF THE CITY OF LOUISIANA, respondents. } Mandamus.

Suit was originally brought by the plaintiff against the city of Louisiana upon certain bonds of said city issued after the 30th of March, 1872, and which were by this court held to be void for the reason that said bonds were not registered as required by an act of the general assembly of the State of Missouri, entitled "An act to provide for the registration of bonds issued by counties, cities, and incorporated towns, and to limit the issue thereof," approved March 30th, 1872. The plaintiff then instituted a suit against the city of Louisiana for money had and received as for and on account of said bonds, and thereupon the court rendered judgment for the plaintiff in the sum of $22,226.40. An alternative writ of mandamus was issued and to the return thereof a demurrer is interposed, and on said demurrer, the circuit judge and the district judge sitting, the following questions occurred, to wit:

1. Whether this court can by mandamus compel the respond-
24 ents to levy and collect a tax sufficient to pay relator's judgment, in addition to the tax of one and one-half of one per centum per annum authorized by section 2, of article 3 of the charter of the city of Louisiana, approved March 12, 1870. Sess. Acts 1870, p. 386.

2. Whether this court has power to compel a levy, by virtue of section 23, article 7 of said city charter, of any tax to meet the indebtedness of said city, other than the funded and bonded indebtedness, exceeding one and one half per cent.

3. Whether this court has power under the provisions of section 77, chapter 160 of the general statutes of Missouri, to compel the respondents to levy and collect a special tax in addition to the taxes authorized to be levied and collected by the charter of said city of Louisiana.

4. Whether the city taxes for all purposes under the city charter for any one year can be levied in excess of the one and one-half per centum per annum authorized by the 2d section of the third article of said charter.

On which several questions the opinions of the judges were opposed. Whereupon, on motion of the respondents, by their counsel, that the points on which the disagreements have happened may, during the same term, be stated under the direction of the judges and certified under the seal of this court to the Supreme Court of the United States to be finally decided, it is ordered that the said points of disagree-
25 ment, together with the pleadings herein, be and they are hereby certified, according to the request of the respondents as aforesaid, and of the act of Congress in that case made and provided.

(Signed) GEO. W. McCRARY,
Circuit Judge.

" SAMUEL TREAT,
District Judge.

26 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached, to be a true transcript of the record and proceedings in case No. 1184 of United States, ex rel. Thomas J. Wood, relator, against the mayor and council of the city of Louisiana, respondents, as fully as the same remain on file and of record in said case, in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this first day of September, in the year of our Lord eighteen hundred and eighty.

[SEAL.] M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy.*

(Indorsed:) No. 1184. United States circuit court, eastern district of Missouri. United States ex rel. Thomas J. Wood, against mayor and council of the city of Louisiana. Duly certified transcript of the record & proceedings in the above entitled cause.

27 In the Supreme Court of the United States, October term, 1880.

MAYOR AND COUNCIL OF THE CITY OF LOUISIANA, respondents and plaintiffs in error,
v.
THOMAS J. WOOD, RELATOR AND DEFENDANT in error.

Error to the circuit court of the United States for the eastern district of Missouri.

On the 5th day of April, 1880, the following proceedings were had in the above entitled cause, in the circuit court of the United States for the eastern district of Missouri, and appear of record in said court in the words and figures following, to wit:

UNITED STATES EX REL. THOMAS J. WOOD, relator,
v.
THE MAYOR AND COUNCILMEN OF THE CITY of Louisiana, respondents. } No. 1184.

Now come the parties, by their respective attorneys, and the court, having examined the question of law arising upon the demurrer of relator to the return of respondents to the alternative writ of mandamus herein, and being now fully advised in the premises, finds the law thereon for the relator. It is therefore ordered that said demurrer be sustained.

And thereupon, on motion of relator, by his attorneys, it is ordered that a peremptory writ of mandamus issue herein, to be directed to the said respondents, commanding them forthwith to levy, and cause to be collected for the year 1880, a special tax upon the property made taxable by law, in said city of Louisiana, sufficient to pay the sum of nine thousand dollars, upon the judgment heretofore rendered in favor of said relator and against said city of Louisiana, for the sum of twenty-two

thousand two hundred and twenty-six dollars and forty cents, with interest and costs, and further commanding the said respondents to levy, and cause to be collected for the year 1881 a special tax sufficient to pay the sum of nine thousand dollars upon said judgment; also to levy and cause to be collected, a special tax for the year 1882, sufficient in amount to fully pay off and discharge the balance then remaining due and unpaid upon the said judgment, interest, and costs; and the said several amounts, as and when collected, to apply to the pay-
28 ment of said judgment, interest, and costs; and that they certify perfect obedience to said writ and said several commands, respectively, on the 1st day of November of each of said years, 1880, 1881, and 1882.

Now, as the said proceedings were inadvertently omitted from the record certified by the clerk of said circuit court to this court, in order to supply said omission without expense or delay, the parties to this cause hereby stipulate and agree, that the Supreme Court may use and consider a duly certified copy of the said proceedings hereinbefore set out, and give them the same force and effect as if the same had been transcribed and inserted into the said record, certified as aforesaid by said clerk, and that neither party shall suffer any harm by the omission. The brief of each party shall be accompanied with a printed copy of this agreement, and the original will be filed and preserved in the office of the clerk of the Supreme Court.

Oct. 16, 1880.

D. P. DYER,
Att'y for Plaintiffs in Error.
JOHN D. S. DRYDEN,
Counsel for Def't in Error.

29 UNITED STATES OF AMERICA,
Eastern District of Missouri:

Be it remembered that on the 5th day of April, 1880, the following proceedings were had and appear of record in the circuit court of the United States in and for the eastern district of Missouri.

UNITED STATES EX REL. THOMAS J. WOOD, relator, *vs.* THE MAYOR AND COUNCILMEN OF THE CITY of Louisiana, respondents.	No. 1184.

Now come the parties, by their respective attorneys, and the court having examined the question of law arising upon the demurrer of relator to the return of respondents to the alternative writ of mandamus herein, and being now fully advised in the premises, finds the law thereon for the relator. It is therefore ordered that said demurrer be sustained.

And thereupon, on motion of relator, by his attorneys, it is ordered that a peremptory writ of mandamus issue herein, to be directed to the said respondents, commanding them forthwith to levy and cause to be collected for the year 1880, a special tax upon the property made taxable by law in said city of Louisiana, sufficient to pay the sum of nine thousand dollars upon the judgment heretofore rendered in favor of said relator and against said city of Louisiana for the sum of twenty-
30 two thousand two hundred and twenty-six dollars and forty cents, with interest and costs, and further commanding the said re-

spondents to levy and cause to be collected for the year 1881 a special tax sufficient to pay the sum of nine thousand dollars upon said judgment; also to levy and cause to be collected a special tax for the year 1882 sufficient in amount to fully pay off and discharge the balance then remaining due and unpaid upon the said judgment, interest, and costs, and the said several amounts as and when collected to apply to the payment of said judgment, interest, and costs, and that they certify perfect obedience to said writ and said several commands respectively on the 1st day of November of each of said years 1880, 1881, and 1882.

31 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a true copy of final judgment in case No. 1184 of U. S. ex rel. Thomas J. Wood, relator, against the mayor and council of the city of Louisiana, respondents, omitted from transcript of record in said cause heretofore filed in the Supreme Court of the United States, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 15th day of October, in the year of our Lord eighteen hundred and eighty.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY,
Deputy.

32 (Indorsed:) No. 1184. United States circuit court eastern district of Missouri. U. S. ex rel., Thomas J. Wood, relator, against The mayor and council of the city of Louisiana, respondents. Duly certified copy of the final judgment in the above entitled cause.

(Indorsed:) Supreme Court, U. S. 1880. October term. No. 1131. Mayor & council of city of Louisiana, pl'ff in error, *vs.* The United States, ex rel. Tho's J. Wood. Certified copy of final judgment. Filed 20th December, 1880.

(Indorsement on cover:) No. 1131. The Mayor & council of the city of Louisiana, plaintiffs in error, *vs.* The United States, ex rel. Thomas J. Wood. E. Missouri, C. C. U. S. Filed 20th December, 1880.

OFFICE SUPREME COURT U. S.
FILED.
DEC 21 1880
JAMES R. MACKENZIE, Clerk.

Supreme Court of the United States.

No.

MAYOR AND COUNCILMEN OF THE CITY OF LOUISIANA, *Plaintiffs in Error*,

vs.

THOMAS J. WOOD, *Defendant in Error*.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF AND ARGUMENT.

DAVID P. DYER,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

MAYOR AND COUNCILMEN OF THE CITY OF LOUISIANA, *Respondents and Plaintiffs in Error*,

vs.

UNITED STATES, AT THE RELATION OF THOMAS J. WOOD, *Plaintiff and Defendant in Error.*

Mandamus

No.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE.

On the 23d day of February, 1878, Thomas J. Wood, the Defendant in Error and relator herein, commenced suit in the Circuit Court of the United States for the Eastern District of Missouri, on certain past due coupons detached from twenty-one bonds purporting to have been issued by the City of Louisiana. On the trial of that cause the Court held that the bonds from which said coupons had been detached were void for want of registration required by the 4th Section of the registration act of the State of Missouri, approved March 30th, 1872, and that no recovery could be

had on said coupons. From this decision the said Wood sued out a writ of error to the Supreme Court of the United States, where said cause No. 156 is still pending and undetermined. Pending the decision in that case said Wood brought suit in the said Circuit Court to recover of the City of Louisiana the money loaned on said bonds and coupons, with counts in the petition as for money had and received, alleging therein that the said twenty-one bonds bought by him of Kehleher & Co. in open market, were subject to the requirements of said Registration Act, and being without registration were void and of no effect as obligations of said city for any purpose whatever.

Upon the trial of the cause judgment was rendered in favor of said Thomas J. Wood for the sum of $22,226 40 with interest and costs; and this cause is a proceeding by mandamus, instituted by the said Thomas J. Wood, relator and defendant in error herein, in the said Circuit Court to compel the respondents and plaintiffs in error herein to levy upon and collect from all the property made taxable by law in the City of Louisiana for State purposes, a special tax sufficient to pay and satisfy in full the said judgment, together with interest and costs.

Respondents made return to said alternative writ and defend on the following grounds:

1. The Court has no power by mandamus to compel the respondents to levy and collect a special tax sufficient to pay relator's judgment, in addition to the tax of one and one-half of one per centum per annum, authorized by Section 2, Article 3, of the Charter of the City of Louisiana.

2. The Court has no power to compel a levy by virtue of Section 23, Article 7, of said City Charter of any tax to meet the indebtedness of the city other than the funded and bonded indebtedness, exceeding one and one-half of one per centum per annum.

3. The Court has no power, under the provision of Section No. 77, chapter 160, General Statutes of Missouri, to compel the respondents to levy and collect a special tax in addition to the taxes authorized to be levied and collected by the Charter of the City.

4. The city taxes for all purposes for any one year cannot be levied in excess of the annual tax of one and one-half of one per centum, authorized by the City Charter.

5. The City Charter now provides, and at the time the debt in question was created, provided for the levy and collection of a tax not exceeding one per centum per annum, upon all property in said city made taxable by law for State purposes, to be applied *pro rata* to the payment of debts of the character of relator's demand — and all creditors of that class are limited to said Charter provision, Section 23, Article 7, for payment of their demands, whether voluntarily made by the city or through the compulsory process of mandamus.

6. The respondents have levied all the taxes required and authorized to be levied for the year 1880, and have no authority to make any further levy for any purpose until the time appointed by law for the annual levy of 1881.

Relator demurred to said return on the following grounds:

1. That the return has shown no obedience to the writ of alternative mandamus.

2. That the return does not state facts sufficient to constitute a legal excuse for such failure.

3. That the return does not show that any of the taxes levied and collected have been applied to the payment of relator's judgment.

4. That under the general laws of Missouri it was the duty of respondents to make the required levy.

5 That under the charter respondents have the power and under the order of the Court it is their duty to make an annual levy of not exceeding one per centum upon all property made taxable by law for State purposes, and apply the same strictly to the payment of relator's judgment, until the same is fully paid and discharged.

Upon the hearing of said demurrer, the opinions of the judges of said Court were opposed, on the following questions, which occurred upon said hearing, to-wit:

1. Whether this Court can, by mandamus, compel the respondents to levy and collect a tax sufficient to pay relator's judgment, in addition to the tax of one and one-half of one per centum, authorized by Section 2 of Article 3, of the Charter of the City of Louisiana, approved March 12, 1870. *Session Acts 1870, p. 386.*

2. Whether this Court has power to compel a levy, by virtue of Section 23, Article 7, of said City Charter, of any tax to meet the indebtedness of the city other than the funded and bonded indebtedness, exceeding one and one-half per centum?

3. Whether this Court has power, under the provisions of Section 77, Chapter 160 of the General Statutes of Missouri, to compel the respondents to levy and collect a special tax in addition to the taxes authorized to be levied and collected by the Charter of said City of Louisiana?

4. Whether the city taxes for all purposes under the city charter foa any one year can be levied in excess of the one and one-half of one per centum per annum, authorized by the Second Section of the Third Article of said charter?

ASSIGNMENT OF ERRORS.

1. The Court erred in deciding the law in favor of the relator, upon the facts set forth in the return of respondents, the truth of which facts is admitted by the demurrer of the relator to said return.

2. The Court erred in sustaining the demurrer, and in rendering final judgment awarding a peremptory writ of mandamus.

3. The peremptory writ, as prescribed and awarded in said final judgment, is not in conformity with the petition of relator, nor the alternative writ herein.

4. The return to said alternative writ shows no default on the part of respondents. It was error, therefore, to award the peremptory mandamus.

5, The peremptory writ, as awarded, discriminates in favor of the relator, against the other judgment creditors of the City of Louisiana, having equal rights with the relator.

POINTS AND AUTHORITIES.

The charter of the City of Louisiana, approved March 12, 1870, and Section 77 and 78, Chapter 169 General Statutes of Missouri 1865, upon the question of levying a tax for the payment of the indebtedness of the city are in *pari materia* and when construed together are in perfect harmony and accord and fully sustain the positions of the plaintiff in error upon the questions herein certified.

The initial step taken in Missouri to compel a levy and collection of taxes to pay the debts and liabilities of a Municipal corporation was taken by the General Assembly of said State in the passage of an Act amendatory to the char-

ter of said City of Louisiana, approved March 1, 1855, the ninth section of which is in the following words:

Sec. 9. If at any time the City Council shall fail to make *suitable provisions* for the payment in whole or in part of any of its *debts* and *liabilities* contracted after the passage of this Act, for the term of twelve months after such debt or liability shall have become due and demand for payment made it shall then be lawful for the Circuit Court or Court of Common Pleas, before which judgment for any such debt or liability shall have been obtained to make and enter up such orders, decrees and appointments, as may be necessary for the levying and collecting taxes in the City not exceeding one-half of one per centum per annum, until such debt or liability shall be fully paid and discharged by the City Authorities. The amount so collected to be applied, under the decree of the Court, strictly to the payment of the debt or judgment.

No further legislation on this subject was had until the revising session of the General Assembly of Missouri in 1865, when Sections 77 and 78 were added to the general law concerning executions.

Chapter 160, General Statutes of Missouri, 1865, p. 650. Said Sections are in the following words;

Sec. 77. "Whenever an execution issued out of any Court of record in this State against an incorporated town or city shall be returned unsatisfied in whole or in part for want of property wherein to levy, such Court, at the return term or any subsequent term thereof, may, by writ of mandamus, order and compel the Chief Officer, Trustees, Council and all other proper officers of said city or town to levy, assess and collect a special tax to pay such execution and all costs."

Sec. 78. "The Court shall determine the time within which the levy and collection of such tax shall be made, and

shall make all necessary orders to secure the prompt and speedy payment of such debt."

The particular Charter provision above recited, was amended and reenacted by an Act of the General Assembly of the State of Missouri, entitled, "an Act to amend an Act entitled an Act to amend and reduce into one the several Acts incorporating the Town of Louisiana and to organize the same into a City." Approved March 14, 1849, and the several Acts amendatory thereof, Approved March 13, 1870.

(Session Acts of Missouri 1870, p. 383 and following) which said Act also contains with said Amended Section (now Section 23, Article 7) and the following further provisions in regard to the levy and collection of taxes and the reduction and payment of the debts and liabilities of said City, viz:

SECTION 2, ARTICLE 3.

Sec. 2. "The City Council shall have power within the City by ordinance: First, To levy and collect taxes *not exceeding one and one-half of one per centum per annum* upon all property made taxable by law for State purposes, and to provide for the collection of the same by sale of real and personal estate in such manner as the Council may, by ordinance provide."

Sec. 11, Art 3. "If the City Council shall, after the passage of this Act, directly or indirectly authorize the increase of the City debt, contrary to the provisions of this Act, the collection of the amount of such excess beyond the limits authorized by this Act shall not be enforced by any Court of this State until the aggregate debt of the City shall have been reduced below the limits provided in this Act."

Sec. 12, Art. 3. "Two-thirds of all the revenue of the City from all sources, whatever collected in each and every

year, shall be held and set apart by the City Treasurer or other lawful custodian of the City funds, for the purpose of paying all interest due or falling due within the current year on the bonded debt heretofore lawfully created or hereafter lawfully to be created, and for the payment or reduction of the debt of the City, until said debt shall be reduced to or below one hundred thousand dollars."

Sec. 13. "The Council shall not fix or reduce the rate of taxation to less than one and one-half of one per centum per annum until two-thirds of such reduced rates of taxation shall be sufficient, including all sources of revenue to meet and pay all accruing interest for the year affected by such reduction, without increasing the principal of the debt."

Sec. 15, Art. 3. "The City Treasurer shall not pay or redeem any warrant or order drawn by authority of the City Council or any City Officer, unless there shall be on hand in the City Treasury at the time of presentation of such warrant or warrants, current, lawful funds sufficient to pay all interest due or falling due within the next ensuing six months, or City Bond or Bonds past due, but the City Treasurer shall, on the presentation of such warrant or order, indorse on such warrant on order the date of its presentation, and such warrant or order shall, from the date of such indorsement, draw interest at a rate of six per cent. per annum until lawfully paid or redeemed."

Sec. 23, Art. 7 — (Sec. 9 Amended). "If at any time the City Council shall fail to make suitable provisions for the payment in whole or in part of any of its debts or liabilities contracted after the passage of this Act, or heretofore lawfully contracted, for the term of twelve months after such debt or liability shall have become due and demand for payment made, it shall then be lawful for the Circuit Court or Court of Common Pleas, before which judgment of any such debt or liability shall have been ob-

tained to make and enter up any such orders, decrees and appointments as may be necessary for the levying, assessing and collecting taxes in the city not exceeding one per centum per annum until such debt or liability shall be fully paid and discharged by the city authorities. The amount so collected to be applied, under the decree of the Court, strictly to the payment of such debt or judgment."

The foregoing are all the provisions of the Charter and General Statutes relating to the levy and collection of taxes for the payment of the demand of the relator, and others of like character, which were in force at the date of the contract, upon which the judgments of relator, Wood and others, are founded.

In order, therefore, to ascertain the extent of the taxing power of the city for the purposes of this case, all the Statutes in *pari materia* must be taken and construed together.

Section 2 Article 3 of the Charter provides for and authorizes the City Council to levy and collect taxes *not exceeding one and one-half of one per centum per annum* upon all property made taxable by law for State purposes. If this Section has any meaning it intends that the tax-payers shall not for any one year be subjected to any greater levy than one and one-half of one per centum for all purposes of the city whatsoever It is so written, and it is not within the domain of legitimate construction to alter, change, or modify this limitation.

Section 12 Article 3 of said Charter provides that two-thirds of the revenue collected in each and every year (one per centum of the taxable value aforesaid), shall be set apart to pay interest and principal as the same become due, upon demands of the character of relator's judgment, until the city debt is reduced to or below one hundred thousand dollars.

Section 13 Article 3 provides that the rate of taxation shall not be reduced below one and one-half of one per centum per annum until two-thirds of such reduced rates (one per centum per annum aforesaid), shall be sufficient to meet and pay all accruing interest without increasing the principal; and Section 15 Article 3 of said Charter prohibits the City Treasurer from paying any City warrant unless he has on hand sufficient funds of the City to pay all interest falling due within the next six months and all bonds past due.

The taxing power of the city is limited, and fixed at the rate of one and one-half of one per centum per annum. Section 2 article 3 declares that it shall *not be more*, and section 13 article 3 declares that it *shall not be less* until two-thirds of the reduced rates shall be sufficient for the purposes of said thirteenth section.

It would seem impossible to fix the taxing power within more certain and definite limits. One and one-half of one per centum for all purposes, two-thirds of said amount (one per centum per annum) for the payment of demands of the character of relator's judgment—the rest, one-half of one per centum, for current expenses and other purposes of the city.

These sections appropriate and set apart the "one per centum per annum" for the payment of such indebtedness, and secure the payment of the same in the manner provided in said sections. It was the law of the contract, written upon the face of the bonds, which relator received for the money borrowed by the city, and still remains a part of the contract, and can not be altered, modified or changed.

But the counsel for relator seem to base their claim for the unlimited taxation contended for, upon Section 23 Article 7 of said City Charter But this section only authorizes the levy of the one per centum per annum for such purpose, to be ordered by the Court, in which judgment

shall be rendered if at any time the City Council shall *fail to make* "suitable provisions" for the payment, in whole or in part, of any of its debts and liabilities specified in said section.

And the judicial power to order and levy is limited by said section to the one per centum per annum aforesaid, and can only be invoked when the city authorities fail to make the "suitable provisions" for payment, in whole or in part, of the debts and liabilities aforesaid. What are these "suitable provisions?" Can they be other than those specified in Sections 2, 11, 12, 17 and 15, Article 3 of the said City Charter? Certainly not! for the city authorities have no power outside of the Charter.

For what purpose were these several enactments made if they were not intended to include all the "suitable" provisions referred to in Section 23 Article 7 of said Charter? All that the City Council can do is to levy the "one per centum per annum" authorized by said sections, and apply the proceeds to the payment of debts of the character of relator's judgment. If the Council fails to make suitable provisions therefor, then the Court in which judgment is rendered is authorized by said Section 23 to do what the City Council ought to have done and no more. Will anybody seriously contend that the limitation of one per centum per annum is not equally binding upon the Courts and the City Council?

The "suitable provisions" mentioned in Sections 23 and 7, and authorized by Sections 2, 12, 13, and 15 Article 3, have been made by the City Council in the passage of an ordinance requiring an annual levy of one and one-half of one per centum per annum upon all the property in said city taxable for State purposes, to-wit, fifty per centum for current expenses, etc., and one per centum for the payment of debts of the character of the demands of relator and others.

The return sets forth these facts, that these assessments

have been regularly made; that the authority of the City Council has been exhausted, and that no further levy for any purpose can be made until the time for the annual levy of 1881.

At the revising session of the General Assembly in 1865, Sections 77 and 78, concerning executions above set forth, were re-enacted, and although Section 77 is not invoked by relator in his petition as authority for the levy demanded, yet the attention of the Court has been called to said Section as authority therefor by relator in his demurrer to the return of the respondents, and upon the hearing of said demurrer the Judges were opposed in opinion upon the question whether under said Section a tax could be levied in addition to the taxes authorized by Charter, sufficient to pay and discharge relator's judgment with interest and costs.

The respondents claim that whilst said Sections 77 and 78 differ from the Charter provisions above set forth, they do not repeal the same, and that the different provisions, when properly construed, are easily reconciled and can stand together.

"A later statute, which is general and affirmative, does not abrogate a former, which is particular, unless negative words are used, or unless the two acts are irreconcileably inconsistent. This is the general doctrine, and it has often been adjudged by this Court."

City of St. Louis v. The Independent Ins. Co. of Mass., 47 Mo. 146 and cases cited.

In the case at the bar the particular statute, the Charter, fixed the rate of taxation at one per centum per annum until the indebtedness contemplated by the Charter is fully paid and discharged by the city authorities, the amount collected to be applied under the decree of the Court strictly to the payment of such debt or judgment.

Sections 77 and 78 are very general, and do not fix any rate of taxation per annum, or for any other period of time,

nor any time within which the levy and collection of the tax should be made; and, therefore, if the Court, in acting upon both statutes, should ascertain the total amount of the indebtedness intended by the Charter provision, and apportion the taxation to be made to pay the particular judgment or judgments, not exceeding one per centum per annum upon all property made taxable by law for State purposes until such intended debt or liability should be fully paid and discharged, there would be no conflict between the particular and general statutes in question, and the exercise of a just discretion would satisfy both.

The particular statute fixes the rate which may be levied annually to pay the intended indebtedness, at not exceeding one per centum per annum. The general statute fixes no rate per annum, and the rate and annual payments must be in accordance with the special statute, which is controlling.

"The reason and philosophy of the rule is, that where the mind of the legislator has been turned to the details of a subject and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the general act, shall not be considered as intending to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all."

Sedgwick Statute and Constitutional Law, 123.

The relator, when he loaned the money to the City of Louisiana, had notice upon the face of each of the twenty-one bonds he received therefor, that they were issued in pursuance of the City Charter, which provided for the levy of one per centum per annum, and no more, for the payment of its debts of the class to which relator's judgment belongs.

The case of U. S. v. Macon County is in point on this question.

"Every purchaser of a municipal bond is chargeable with notice of the statute under which the bond was issued. If the statute gives no power to make the bond, the municipality is not bound. So, too, if the municipality has no power, by express grant or by implication, to raise money by taxation to pay the bond, the holder can not require the municipal authorities to levy a tax for that purpose."

"If the purchaser in this case had examined the statutes, he would have seen what might prove to be difficulties in the way of payment. As it is, he holds the obligation of a debtor who is unable to provide the means of payment. We have no power by mandamus to compel a municipal corporation to levy a tax which the law does not authorize. We can not create new rights or confer new powers. All we can do is to bring existing powers into operation. In this case it appears that the special tax of one-twentieth of one per cent. has been regularly levied, collected and applied, and no complaint is made as to the levy of one-half of one per cent. for general purposes. What is wanted is the levy beyond these amounts, and that, we think, under existing laws, we have no power to order."

99 U. S., 582.

As before stated, the bonds issued to relator for the money borrowed of him by the City, and for which relator's judgment was rendered, recite upon their face that they were issued in pursuance of the Charter of the City of Louisiana. This Charter, by the sections herein recited, provides for raising by taxation and setting apart a specific fund for the payment of debts of the character of relator's judgment, and upon the default mentioned in said Twenty-third Section, designates the judicial proceedings to be instituted in the Court in which judgment is rendered, to satisfy such debt or liability. These provisions entered into and formed

a part of the contract, and especially that part of the contract which provided for the payment of the bonds, and the purchaser of said bonds and all others into whose hands the same might come, are charged with knowledge of the fact that they were to look for payment to the fund provided by the Charter It is no fault of the respondents that the fund thus provided may prove inadequate to discharge all the obligations which it was intended to meet, by any single annual levy. The "one per centum per annum" is the fund provided by the Charter, and whatever relator's proportion thereof may be, he is entitled to receive—no more and no less.

State ex rel. Watkins v. Macon C. Court, 66 Mo. 49.

Neither the General Statutes above cited, which are less specific in detail than the Charter, nor the alleged default of respondents, can increase the liability of the City nor enlarge the remedy of the relator.

It will appear to the court, upon an examination of the record, that the finding of the law for the relator, upon the demurrer, was erroneous; that the return to the writ of alternate mandamus shows no default on the part of respondents; that the court erred in awarding a peremptory mandamus at variance with the petition and the alternative writ, and discriminating in favor of relator, against the other judgment creditors of said City of Louisiana, mentioned in said return, who are equally entitled with relator to a *pro rata* distribution of the moneys derived from the annual levy of one per centum, provided by Section 23, Article 7, of said City Charter; for which reasons the several questions contained in the said certificate of division ought to be decided in the negative.

It is therefore submitted that the limitation in the Charter of the City, under which this indebtedness was created, must control, and that to levy a greater rate of taxation

than is thus allowed and provided for in the Charter would be to give the holders of the bonds a greater amount each year than they agreed to accept when the contract was made, and would amount virtually to a confiscation of the property of the tax-payers of the city.

D. P. DYER,

Attorney for Plaintiff in Error.

APPENDIX TO BRIEF AND RECORD.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

MAYOR AND COUNCIL OF THE CITY OF LOUISIANA, *Respondents and Plaintiffs in Error.*

v.

THOMAS J. WOOD, *Relator and Defendant in Error,*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF MISSOURI.

On the 5th day of April, 1880, the following proceedings were had in the above entitled cause, in the Circuit Court of

the United States, for the Eastern District of Missouri, and appear of record in said court, in the words and figures following, to-wit:

"UNITED STATES, *ex. rel.* THOMAS J. WOOD, *Relator*,
v.
THE MAYOR AND COUNCILMEN OF THE CITY OF LOUISIANA, *Respondents.*" } No. 1184.

"Now come the parties by their respective attorneys, and the court, having examined the question of law arising upon the demurrer of relator to the return of Respondents to the alternative writ of mandamus herein, and being now fully advised in the premises, finds the law thereon for the relator. It is therefore ordered that said demurrer be sustained."

And thereupon, on motion of relator, by his attorneys, it is ordered that a peremptory writ of mandamus issue herein, to be directed to the said respondents, commanding them forthwith to levy, and cause to be collected for the year 1880, a special tax upon the property made taxable by law, in said City of Louisiana, sufficient to pay the sum of Nine Thousand Dollars, upon the judgment heretofore rendered in favor of said relator, and against said City of Louisiana, for the sum of Twenty-two Thousand Two Hundred and Twenty-six Dollars and Forty Cents, with interest and costs; and further commanding the said respondents to levy, and cause to be collected, for the year 1881, a special tax sufficient to pay the sum of Nine Thousand Dollars upon said judgment; also to levy, and cause to be collected, a special tax, for the year 1882, sufficient in amount to fully pay off and discharge the balance then remaining due and unpaid upon the said judgment, interest and costs; and the said several amounts, as and when collected, to apply to the payment of said judgment, interest and costs; and that they certify perfect obedience to said writ and said several

commands, respectively, on the 1st day of November of each of said years 1880, 1881 and 1882."

Now, as the said proceedings were inadvertently omitted from the record certified by the clerk of said Circuit Court to this court; in order to supply said omission without expense or delay, the parties to this cause hereby stipulate and agree that the Supreme Court may use and consider a duly certified copy of the said proceedings hereinbefore set out, and give them the same force and effect as if the same had been transcribed and inserted into the said record, certified as aforesaid by said clerk; and that neither party shall suffer any harm by the omission. The Brief of each party shall be accompanied with a printed copy of this agreement, and the original will be filed and preserved in the office of the Clerk of the Supreme Court.

D. P. DYER,
Attorney for Plaintiffs in Error.

JOHN D. S. DRYDEN,
Counsel for Defendant in Error.

Oct. 16, 1880.

OFFICE SUPREME COURT U.S.
FILED
DEC 21 1880
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

MAYOR AND COUNCILMEN OF THE CITY OF LOUISIANA,
PLAINTIFFS IN ERROR,
vs.
THOMAS J. WOOD,
DEFENDANT IN ERROR.

MANDAMUS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

D. P. DYER,
Of Counsel for Plaintiffs in Error.

Maynard & Chambers, Printers, 209 N. 4th St,

IN THE

Supreme Court of the United States

MAYOR AND COUCILMEN OF THE CITY OF LOUISIANA,
PLAINTIFFS IN ERROR.
vs.
THOMAS J. WOOD,
DEFENDANT IN ERROR.

Mandamus.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

It is contended by the learned counsel for defendant in error, in their brief, pp. 8, 9, 10, that:

"The theory maintained by the plaintiffs in error, that the charter rate is the extreme limit of taxation, is based upon the provisions of Sections 12 and 15 of Article III of the charter of 1870, and rests upon the supposition that these sections are in force as part of the laws of the land" that

"The General Assembly by the charter of 1870 inaugurated the policy of making it obligatory upon the municipal authori-

ties to set apart, and strictly apply to the payment of interest and the reduction of the public debt, not less than two-thirds of the revenues of the city in each year. That policy was evinced, not only by the sections cited (12 and 15 of Article III), but still more distinct by Section 12 of Article IV of the charter, a section which the respondents seem to have overlooked."

"But whatever was the purpose or effect of these sections in their origin, they can afford no support to the theory we are considering, because the policy to which we have alluded has been completely abandoned, and the sections 12 and 15 of Article III. long before the contract on which the relators judgment was recovered, were repealed outright, and everything in section 12 of Article IV. *supra*, which looked to a classification and apportionment of the revenues, was entirely abrogated. With the repeal of these charter provisions, the superstructure which the learned counsel for the respondents has built must needs fall to the ground."

Not so. The theory contended for by the plaintiff in error does not depend upon the repealed sections. The limitations of the taxing power of the City are contained in other sections of the City Charter not repealed and still remaining in full force and effect.

The repealed sections directed the manner of the annual levy and collection of taxes for all purposes, and the appropriation of the moneys derived therefrom, but before the repeal thereof and before the contract with the said relator, the City Council in pursuance of these and other sections of said Charter, passed an ordinance requiring an annual levy of one half of one per centum for the current expenses of the city and one per centum for the bonded indebtedness of said city, and caused the same to be levied, collected and appropriated annually for the payment of expenses, and the lawfully contracted debts of the city, as set forth in the return to the alternative writ of mandamus.

The amended Charter of 1870, repealing the sections in question, substituted no new methods for the levy, collection

and appropriation of the annual taxes provided by the charter, but left the ordinance passed in pursuance thereof in full force and effect as the law of that municipality. The City Council, in the absence of the authority of the repealed sections, had the power to pass the ordinance in question under the provisions of the Second Section of the Third Article of said Charter; and this ordinance, being from a common source of authority with the Charter provisions, has the validity and authority of a State enactment, for "it is the power of the State that speaks in both."

State v. De Bar, 58 Mo. 378.
1 Dillon Mun. Corp. § 245.

The ordinance in question provided for the payment of the indebtedness of the city to the relator, and entered into and formed a part of the contract, and cannot be altered, modified or repealed.

"When a right has arisen upon a contract, or a transaction in the nature of a contract, authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it or an action for its enforcement. It has become a vested right which stands independent of the statute."

Steamship v. Jolliffe, 2 Wall. 459.

The repeal of the specified sections did not affect the rights of the tax payers, who constitute the body politic of the municipal corporation, and Section 23 of Article VII of said Charter remains in full force and unrepealed, and is still a guaranty to the tax payers of said municipality that no more than one per centum per annum shall be imposed upon their property for the payment of the city debts "lawfully contracted."

It must be conceded that the authorities of the City of Louisiana have no power under the City Charter or under any law of the State, to levy any tax for any purpose in excess of "one and one-half of one per centum per annum" provided by charter and ordinance. The one and one-half of one per centum per anuum is the limit, and within this limit all appropriations for the payment of the lawful indebtedness and current expenses of the city must be made.

Beyond this, the law does not authorize, nor does duty compel them to go. The remedy invoked by this mandamus proceeding is in excess of the authority and duty of the City Council, and ought not to be granted.

"An important feature of the writ of mandamus, and one which distinguishes it from other remedial writs is that it is used merely to compel action and cause the performance of a pre-existing duty. In no case does it have the effect of creating any new authority, or of confering power which did not previously exist, its proper function being to set in motion and to compel action with reference to previously existing and clearly defined duties. It is, therefore, in no sense a creative remedy, and is only used to compel persons to act where it is their plain duty to act without its agency. And it follows necessarily that the writ will not go to command the performance of an act which would be unlawful in the absence of the writ."

High. Ex. Rem. Sec. 7.
U. S. v. Macon County, 92 U. S. 582,
Cited in original brief of plaintiffs in error.

The return to said alternative writ shows that judgments amounting to over $100,000 of like character of relator's judgment, have been rendered in due form against said city, and the said writ requires the plaintiffs in error to order and make a single levy of sufficient amount to pay relator's judgment. If the relator is entitled to this remedy the other judgment creditors mentioned in said return are entitled to the same remedy, and none of them are so entitled unless it was the particular duty of the City Council to make such levy. Can there be the shadow of a doubt, that if the city authorities had

attempted to make a single levy sufficient to pay judgment debts amounting to over $100,000, that any tax payer might have stopped the proceedings by injunction? And yet the relator asks this court to compel the city authorities to perform an act *not a duty*, which any tax payer of the city might, if ordered, have enjoined.

The repeal of said sections, (to which the attention of counsel for plaintiff in error had not been directed at the time of preparing of his original brief herein,) conferred no additional powers and imposed no additional duties upon the City Council, and although repealed, they still are as operative for the purpose of affording a legislative exposition of the powers and duties of the City Council in respect of the rights of parties accruing while said sections were in force or accruing under the ordinance passed in pursuance of said sections, as they were upon the date of their passage and approval.

Bank of Savings v. Collector, 3 Wall. 513.
Steamship Co. v. Jolliffe, 2 Wall. 457.

The learned counsel in their petition for mandamus seem to have invoked the authority of section 23, Article VII. of the City Charter, but insist that the remedy given by said section is not given to all judgment creditors of the city *in solido*, but given to every judgment creditor severally "until SAID DEBT OR LIABILITY, not plural debts or liabilities, shall be fully paid by the city authorities."

A careful analysis of said section must lead to the opposite conclusion.

The remedy in said section is given if the City Council shall fail to make suitable provisions for the payment, in whole or in part, of any of the debts and liabilities, (plural number) contracted after the passage of this act or heretofore lawfully contracted for the term of twelve months after *such debt or liability* (*meaning of course the* DEBTS AND LIABILITIES *aforesaid*) shall have become due and demand for pay-

ment made, it shall be lawful for the Circuit Court or Court of Common Pleas before whom judgment of any such *debt or liability* (*the debts and liabilities aforesaid, or any or all of them*) shall have been obtained to make and enter up such orders, decrees and appointments as may be necessary for the levying, assessing and collecting taxes in the city not exceeding one per centum per annum, until such debt or liability (*the debts and liabilites aforesaid*) shall be fully paid and discharged by the city authorities. The amount so collected (in solido) to be applied under the decree of the court strictly to the payment of such debt or judgment," that is to say the amount collected to be applied to the payment of *the debts and judyments* aforesaid.

The charter and the ordinance require the city council to make provision for the payment of all its lawfully contracted debts by the levy and collection of an annual tax of one per centum per annum, and makes no discrimination between the creditors. This intent is honest, sensible and just. Could the same be said of the charter if it provided that, upon the default of the city to "make suitable provisions," that one judgment creditor should be entitled to have the annual levy of one per centum made for his sole benefit, to the exclusion of the other creditors of the city, or that, because of such default of the city authorities, where a large number of creditors have reduced their debts to judgments, as in the case of the City of Louisiana, that each and every of such creditors should be entitled to a levy equal in amount to the levy intended for all creditors, where no such default had been made?

The effect of this would be to punish the tax payers for the neglect of the city officers.

The rights of other creditors in the first instance cannot be concluded, nor can the tax payers of the city be subjected to an additional burden of taxes, by any such process.

The cases of Britton v. Platte City, *1 Dillon, 1*, and Butz v. Muscatine, *8 Wall., 580*, referred to in the brief of defend-

ant in error are not in point, and have no bearing upon this case, for the reason that provision is made in Sec. 23, Article 7, of the City Charter, for the levy of a tax of one per centum per annum for the payment of debts of the character of relator's demand, whereas the Charters in the cases referred to, make no such provision.

Said Section 23, taken in its whole scope and design, provides in case of the default referred to, a remedy not for a single creditor, but for all creditors to whom the city is indebted or liable. The proceeding to be invoked is in the nature of a chancery proceeding, for said section authorizes the Court to make and enter up such orders, decrees and appointments as may be necessary for the levying, assessing and collecting taxes in the city, not exceeding one per centum per annum, until such debt or liability shall be fully paid and discharged by the city authorities. The very language of the section intends an equitable proceeding, to the end that all of the debts and liabilities contemplated by said section should be fully discharged by the annual levy of one per centum upon all property in the city made taxable by law for State purposes. The Court, under said section 23, would have the right to appoint its own agents to levy, assess and collect the taxes for the purposes of said section, and administer the revenues derived therefrom as a trust fund for the benefit of all the creditors, without the assistance of the city authorities.

This authority is greater than the courts have usually exercised in mandamus proceedings, and it is a matter of grave doubt whether the remedy by mandamus can obtain where a different proceeding is prescribed by statute.

The learned counsel in their brief, page 23, say:

"When the General Assembly, in 1879, came in obedience to a constitutional requirement to revise all the statutes of the State in force of a general nature, Sec. 77 of Ch. 160, (now section 2415) was brought under consideration, an amendment was proposed by way of proviso expressly restricting the court to a tax within the charter limits. The amendment was rejected, both houses concurring. (see Revisor's note to section 2415, Revised Statutes of 1870, vol. 1, p.

405), and the section was adopted and re-enacted just as it had stood upon the Statute Book for the previous fourteen years."

In this the learned counsel are mistaken. The proviso rejected was a part of Senate Bill number 52, introduced by Senator Wilson. The bill which passed and became a law, and received the signature of the governor, No. 358, was introduced by Senator Lakenan, and is now known as "Chapter 32," "Of Executions," Revised Statutes of Missouri, 1879, page 389 and following, and it is not to be presumed that the rejected proviso to Mr. Wilson's bill was inserted in Mr. Lakenan's bill without authority. Said Section is in the following words:

"*Sec. 2415. When execution against City returned unsatisfied, officers thereof may be compelled by mandamus to levy.*"

"Whenever an execution issued out of any court of record in this State against any incorporated town or city shall be returned unsatisfied, in whole or part, for want of property whereon to levy, such *court*, at the return term, or any subsequent term thereof, may, by writ of mandamus, order and compel the chief officer, trustees, council and all other proper officers of such city or town to levy, assess and collect a special tax to pay such execution and all costs; provided, the rate of taxation so ordered to be levied and assessed shall in no case exceed the rate prescribed by its Charter."

It is true that the Revisors, in a foot note to the chapter on Executions, say that the said proviso was never passed, and refer to the pages in the Senate and House Journals, which show that a proviso to Senator Wilson's bill, No. 52, with other provisions was rejected, but this rejection does not affect Senator Lakenans' Bill, No. 358, as above stated.

The proviso in the section above set forth forms a part of the statute roll, and imports absolute verity. The revisors cannot, especially after the adjournment of the General Assembly, deny its verity and by a single flourish of the pen

declare a law upon the statute book to be no law. This can only be done in a proper case made before a court of competent jurisdiction.

The proviso duly passed did not affect the rights of the parties to these proceedings. The contract was made under provisions of the charter and ordinance that no more than one per centum per annum should be levied for the payment of debts of the character of relator's judgment.

The failure of the city authorities to make suitable provisions for the payment of such debts which is denied by the return of the respondents, could not augment the rights of the relator, nor increase the liability of the tax payers of the City of Louisiana.

The proviso, if it never had been passed still existed in the deposit of law for Section 2415 of the Statute of Executions being a later, general and affirmative statute, cannot abrogate a former which is special and particular.

D. P. DYER,

of Counsel for Plaintiffs in Error.

OFFICE SUPREME COURT U.S.
FILED
DEC 21 1880
JAMES H. McKENNEY, Clerk.

—IN THE—

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

MAYOR AND COUNCILMEN OF THE CITY OF LOUISIANA,
Plaintiffs in Error,
vs.
UNITED STATES, at the Relation of THOMAS J. WOOD,
Defendant in Error.
} *No.*

Error to the Circuit Court of the United States, for the Eastern District of Missouri.

STATEMENT AND BRIEF.

DRYDEN & DRYDEN,
Counsel for Defendant in Error.

Pierce Bros., Law Printers, 217 North Third Street.

—IN THE—

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

MAYOR AND COUNCILMEN OF THE CITY OF LOUISIANA,
Plaintiffs in Error,
vs.
UNITED STATES, at the Relation of THOMAS J. WOOD,
Defendant in Error.

No.

Error to the Circuit Court of the United States, for the Eastern District of Missouri.

STATEMENT OF THE CASE

BY DRYDEN & DRYDEN, COUNSEL FOR DEFENDANT IN ERROR.

This was a proceeding by mandamus to enforce the payment of a judgment for $22,226.40 recovered by the relator, Wood, against the city of Louisiana, in said Circuit Court, December 7, 1878.

Upon an information presented by Wood, an alternative writ was issued by the Circuit Court on the eighteenth of December, 1879, returnable on the twenty-second day of January, 1880.

The writ was addressed to the several plaintiffs in error, who were then occupying the respective offices of mayor and councilmen of said city, in their official capacities, and its averments were substantially as follows:

That the city of Louisiana was a municipal corporation, whose affairs were managed by a city council, composed of eight councilmen, presided over by the mayor; that the plaintiff in error, Rose, was the mayor, and the other plaintiffs in error the councilmen then composing said city council; that it was the duty of said council, and it had the power, to levy and collect taxes upon all property in the limits of said city subject to taxation for state purposes, to appropriate money, and *to provide for the payment of the debts* of said city.

That on February 23, 1878, the relator sued said city in said Circuit Court for divers moneys, received by it to his use since the twelfth day of March, 1870, and in said suit recovered judgment against it for $22,226.40 debts, and for his costs of suit; that before commencing said suit, namely: on February 22, 1878, he demanded of said city the payment of the said sum of $22,226.40, but it failed to pay the same or any part of it to him; that on January 17, 1879, an execution was issued upon said judgment against said city, directed to the marshal for said district to be executed, but the same was returned by said marshal on March 17, 1879, unsatisfied for want of property of said city whereon to levy.

That more than twelve months had elapsed since relator's debt became due, and its payment had been demanded by him of said city, but yet said city council had failed to make any provision whatever for its payment, either in whole or in part; that the property of said city subject to taxation for state purposes, and hence liable to taxation by the city council, was of the value of $907,-200.00, and that taxes could be levied on and collected from all thereof to pay said judgment, interest and costs, and that no steps had been taken by plaintiffs in error, or any of their predecessors, to pay said debt and costs, or to levy any tax to pay same.

And the writ thereupon commanded the plaintiffs in error to levy and collect upon and from all property in

said city, subject to taxation for state purposes, a special tax sufficient to fully pay and satisfy the whole of said judgment, interest and costs; and the same as and when collected, to apply, appropriate and pay over to the relator in discharge of his said judgment, interest and costs.

To this writ the plaintiffs in error made return in substance as follows:

The allegations as to the recovery of relator's judgment, the issue and return unsatisfied of execution thereon, and the value of property in said city taxable for state purposes they expressly admit.

The allegations as to the demand made by relator for payment of his debt, the character of the debt for which the judgment was had, the power of the city council to appropriate money and provide for the payment of the debts of the city, and as to its failure for twelve months after such demand to pay or provide for paying same, they do not deny.

They do not allege any obedience of the writ, but, as an excuse for disobedience, say:

1. That under the charter of said city there are divers provisions for reducing and satisfying different classes of its debts, all of which were in force when the contracts on which relator's judgment was founded were made, and that there is no provision therein for the levy and collection of any special tax for the purpose of satisfying in one payment any particular judgment, but that all said charter provisions intend and contemplate a gradual reduction and settlement of the liabilities of said city.

2. That, including relator's judgment, there have been judgments rendered against said city by said court, and by the Circuit Court of Pike County, Missouri, in favor of sundry persons, and for sundry sums (all of which are set out), amounting to one hundred thousand dollars and more, and that if relator or any one of the plaintiffs

in said other judgments is entitled to have satisfaction of his judgment by a levy of taxes, in the manner demanded by relator, then all of said judgment plaintiffs are entitled thereto equally with relator; but they deny that relator is entitled to have any levy of taxes made for the purpose of satisfying his judgment in full, or that they have any authority to levy or collect taxes for such purpose; and they aver that if any authority in this respect is vested in them, it must be exercised by them in their discretion for the benefit of the particular class of creditors within the limits of the charter provisions, applicable to such class, and not for that of one creditor specially to the exclusion of others.

That under the authority of the charter they are not authorized to levy a tax of more than one per centum per annum, for the purpose of paying relator's judgment and the other judgments of the same class above named, and that a tax sufficient to satisfy relator's judgment, with interest and costs as demanded, would exceed what relator would be entitled to receive, under any provision of said charter providing for the payment of the city's debts by the levy of taxes.

3. That pursuant to law and said charter provisions, they have provided by law for the levy and collection of all taxes required to pay the current expenses of said city, and for the levy and collection of a tax of one per centum per annum for the purpose of paying off the lawfully contracted debts of said city, and that they have caused said taxes to be levied and collected, and the money derived therefrom has been, and is being appropriated to the payment of the current expenses and the said debts of the city in the manner required by the charter and ordinances of said city; and that up to the time of making their return they have levied all taxes required by the charter, or any ordinance of said city, or by any law of the state, to be levied for the purposes aforesaid, and having exhausted all their authority

in that respect, they are prohibited from making any further levy until the time appointed by law for the next annual levy.

To this return the defendant in error demurred upon the following grounds:

1. That it did not show obedience of the writ.

2. That it did not show facts sufficient to constitute a legal excuse for failure to obey the writ.

3. That though it alleged the levy and collection of taxes applicable to the payment of the debts of the city, it did not appear that any part thereof had been applied to the payment of relator's judgment.

4. That under the provisions of the general laws of Missouri, it was the duty of the [now] plaintiffs in error, and they had the power, to levy and collect a special tax as commanded in the writ sufficient to pay said judgment, and so to do at once.

5. That under the provisions of the city's charter, plaintiffs in error had the power, and it was their duty in obedience to the writ, to levy and collect taxes sufficient to pay said judgment, interest and costs, and to apply the same strictly to the payment thereof, until it was fully paid, provided said taxes were not levied at a greater rate than one per centum per annum on the assessed value of the property within the city, subject to taxation for state purposes.

This demurrer was sustained, and thereupon, on April 5, 1880, an order made that a peremptory writ issue, commanding plaintiffs in error to levy and cause to be collected for the year 1880 a special tax upon the property made taxable by law in said city, sufficient to pay $9,000 upon relator's judgment; also to levy and collect for the year 1881 a special tax sufficient to pay $9,000 more upon said judgment; also to levy and collect a special tax for the year 1882 sufficient to pay off

the balance then remaining unpaid upon said judgment, interest and costs, and the said several amounts when collected to apply to the payment of said judgment, interest and costs. (See appendix hereto.)

Upon the hearing of the said demurrer, which was before the Circuit Judge (McCrary), and the District Judge (Treat), the judges were divided in opinion upon certain questions; and the opinion of the Circuit Judge prevailing, the judgment was rendered in accordance therewith. A certificate stating the points upon which the judges were opposed in opinion was made, and has been copied into the transcript by the clerk. Said questions upon which the opinions of the judges were so opposed are stated on page four of the brief of plaintiffs in error.

To reverse the judgment awarding the peremptory writ, the plaintiffs on July 16, 1880, sued out their writ of error to this court.

BRIEF AND ARGUMENT.

I.

The charter limit of one and one-half per cent. per annum, is a limitation upon the powers of the city council in respect to the levying of taxes for ordinary municipal purposes only, and not in respect to the levying of special taxes to pay judgments.

In the trial in the Court below the plaintiffs in error took the position, and in their printed argument they labor to maintain the same position here, that the charter rate of *one and one half per cent. per annum* was the utmost limit of the city's power to tax, and of the tax

payers' liability to taxation to meet municipal obligations, and that Section 23, of Art. VII of the city charter, and Section 77, of Chapter 160, of the General Statutes [now Section 2415, of Revised Statutes of 1879,] do not authorize the imposition of any tax, for any purpose above the said charter rate, but were designed merely to give power to the courts to compel the city authorities, when in default, and when occasion required to levy and collect the needed taxes *within* the charter limit.

From the position thus taken resulted the four questions certified to this court from the Circuit Court. The questions are as follows:

1. Whether the court can by mandamus compel the respondents to levy and collect a tax sufficient to pay relator's judgment, in addition to the tax of one and one-half of one per centum, authorized by Section 2, of Article III, of the charter of the city of Louisiana, Approved March 12, 1870? [Session Acts, 1870, p. 386.]

2. Whether this court has power to compel a levy by virtue of Section 23, Article VII, of said city charter of any tax, exceeding one and one half per centum, to meet the indebtedness of the city, other than the funded and bonded indebtedness?*

3. Whether this court has power under the provisions of Section 77, Chapter 160, of the General Statutes of Missouri, to compel the respondents to levy and collect a special tax in addition to the taxes authorized to be levied and collected by the charter of said city of Louisiana?

4. Whether the city taxes for all purposes under the city charter, for any one year, can be levied in excess of

*NOTE —In copying this question, we have for the sake of perspicuity ventured to place the sentence "exceeding one and one-half per centum" immediately following the word "tax," instead of at the close of the question where it stands in the original.

the one and one-half per centum per annum, authorized by the second section of the third article of said charter?

The questions all impliedly deny that any tax in excess of the charter rate of one and one-half per cent per annum, can lawfully be levied to pay the relator's debt; but the first, second and third intend specifically to challenge Section 23, of Article VII, of the charter, and Section 2415 of the Revised Statutes of 1879 (same as Section 77, Chap. 160, General Statutes of Missouri, 1865,) as authority for such tax.

The theory maintained by the plaintiffs in error that the charter rate is the extreme limit of taxation, is based upon the provisions of Sections 12 and 15 of Article III, of the charter of 1870, (see same in respondent's brief pp. 7 and 8), and rests upon the supposition that these sections are in force as part of the law of the land.

The General Assembly by the charter of 1870 inaugurated the policy of making it obligatory upon the municipal authorities to set apart, and strictly apply to the payment of interest and the reduction of the public debt, not less than two-thirds of the revenues of the city in each year. That policy was evinced, not only by the sections cited, (12 and 15 of Art. III), but still more distinctly by Section 12, of Article IV of the charter a section which the respondents seem to have overlooked. The last named section is in the words following (Sess. L. 1870, p. 395):

"SEC. 12. It shall be the duty of the city treasurer to receive and keep the money of the city, and to pay out the same on warrants drawn by the mayor or other officer authorized by ordinance to draw them. He shall, for the time being, unless otherwise provided by the city council, act as city comptroller, and as such shall keep true and correct accounts with the city and its officers; he shall keep a book of accounts with the city, show-

ing under the proper heads of appropriation all expenditures of the city; *he shall credit under the head of interest fund two-thirds of all receipts of revenue of every description whatever, until said fund shall be sufficient to pay all interest of the city, due or falling due on the bonded debts of the city, and the overplus, if any, of such two thirds of the revenue shall be placed to the credit of bills payable or bond account, to be paid only on interest or bond account as the case may be. Said estimates of interest shall embrace all interest due or to become due in the next ensuing six months, after the receipt of such revenue; the remainder of one-third of all the revenue aforesaid shall be by the comptroller placed to the credit of such class of appropriations as the city council shall direct, so as to show the amount expended or to be expended for each separate class of city expenditures, whether of city government, street improvement or repairs, wharf repairs, or such other general or special heads as the city council shall direct; provided, however, that the city council may order to be placed to the credit of the interest or bond account any portion of the said one third of the city revenue, should two-thirds of the revenue hereinbefore provided be insufficient for the purposes aforesaid.*"

These charter provisions, however, it is plain were devised and designed merely for the ordinary administration of the affairs of the city,—for the government of the city "on a peace basis,"—and were not intended to provide for an extraordinary emergency, such as now exists. But, whatever was the purpose or effect of these sections in their origin, they can afford no support to the theory we are considering, because the policy to which we have alluded has been completely abandoned, and the Sections 12 and 15 of Article III, long before the contract on which the relator's judgment was recovered, were re-

pealed outright, and everything in Section 12 of Article IV, *supra*, which looked to a classification and apportionment of the revenues, was entirely abrogated. With the repeal of these charter provisions, the superstructure which the learned counsel for the respondents has built must needs fall to the ground. The repeal was effected by the third and fourth sections of an act, approved April 1, 1872, amendatory of the charter of the twelfth of March, 1870, in these words [Session Laws of 1872, p. 436]:

"SEC. 3. *And be it further enacted*, that sections twelve, fourteen and fifteen of article three of said act be and the same are hereby repealed.

"SEC. 4. That section twelve of article four of said act be amended so as to read as follows: Section 12—It shall be the duty of the city treasurer to receive and keep the money of the city, and to pay out the same on warrants drawn by the mayor or other [city] officer authorized by ordinance to draw them. He shall, for the time being, unless otherwise provided by the city council, act as comptroller, and as such, shall keep true and correct accounts with the city and its officers; shall keep a book of accounts with the city, showing under the proper heads of appropriation all expenditures of the city." [The amendment, it will be observed, consists simply in dropping from the section as amended that part of the original which we have placed in italics, being the part which enjoined upon the authorities the application of two-t irds of the revenue to the payment of interest, and the reduction of the city debt.]

The abrogation of these Charter provisions leaves with the city the absolute disposal and control of her revenues; she may levy and collect taxes to the *maximum* limit, and every dollar raised she may dispose of at her mere pleasure; she may expend all in the purchase of places for the burial of her dead, or she may employ it in the construction of public works for the comfort and convenience of her people who survive, or

she may put it to the more questionable use of discounting her own debts.

If her control of her revenue be as supposed, and it be true, as claimed by the respondents, that the courts are powerless to compel the levy and collection of special taxes beyond the charter limit, the relator is in a pitiable plight: indeed, as are all of his fellow-creditors.

II.

The court, by force of Section 23, of Article VII, of the charter of 1870, has power in the contingency contemplated by that section, and subject to the limitations of the section to compel the levy and collection of taxes to pay the relator's judgment, unrestrained by the provisions of Section 2, of Article III, of the charter, and, therefore, the second question certified to this court must be answered in the affirmative.

The power given by Sec. 2, of Art. III to levy and collect taxes is a power to raise money for the *ordinary* purposes of the municipal government.

Britton v. Platte City, 2 Dillon's R., 4.

It is an administrative power to be employed by the municipal authorities in the exercise of their discretion, not in the interest of any particular person or class of persons, but in the interest of the whole public. On the other hand, the power given by Section 9 of the Act of March 1, 1855, amended and substituted by Sec. 23 of Art. VII of the charter of 1870, to levy and collect taxes, is a power to raise money for an extraordinary purpose, and in an exceptional case. (See the two sections at pp. 6, 8 and 9 of respondent's brief.)

It is a power of a judicial sort and remedial in its nature, to be exercised by *the courts* in the interest of a judgment creditor — not of all credi-

tors, nor of all judgment creditors, — by way of enforcing payment of the particular judgment, or by way of the execution of the judgment. The exercise of the power by the court is in nowise dependent upon the *cause* of the failure of the council to provide: it is enough that there is a failure. Says the section: "If at any time the city council shall fail," any failure, no matter from what cause, whether from a disinclination to act, or because the council has reached its limit of taxation, the right to the exercise of the power by the court instantly springs up. The power conferred by the two sections—Section 2 of Art. III, and 23 of Art. VII—are distinct and unlike, and wholly independent one of the other.

III.

The Circuit Court, by force of Section 2415 of the Revised Statutes of Missouri of 1879, corresponding to Sec. 77, of Ch. 160, of the General Statutes of 1865 [*see Vol. 1, of R. S. of 1879, p. 405, and General Statutes 1865, p. 650*], *has power on return of* nulla bona *to compel the levy and collection of taxes sufficient to pay the relator's judgment, irrespective of the limitations of the city charter; and the first and second questions certified must therefore likewise have an affirmative answer.*

That Section 2415,—formerly Section 77,—applies as well to the city of Louisiana as to other cities and towns in the State of Missouri, is not a point in controversy; the respondents concede its applicability, but, treating it as a statute in *pari materia* with the charter, they endeavor to fritter away and destroy its meaning and force by construction. (Resp. brief, pp. 9, 12 and 13.) The office given to this section by the construction we have referred to is, as we have seen, to invest the courts with power to compel action by the municipal authority

to the extent of the charter limit, but nothing beyond; in other words, that the charter limit is the limit of the court's powers.

This notion of the controlling force of the charter limit was the prime question in Britton v. Platte City, *supra*, and it was there decided in 1871 by Dillon, J., Treat and Krekel, J. J., concurring, — following Butz v. Muscatine, 8 Wall. 580 — that the charter tax was a *general* tax for the ordinary purposes of the municipal government, and that the tax under the provisions of the general law was a special tax, "other than and different from the general tax provided for in the charter." In short, that the two statutes were both in force, and one independent of the other, each having an appropriate sphere, and each in operation within its proper sphere.

By the general law the tax to be levied is "a special tax," in contradistinction, it must be, to some other tax; the limit, and the only limit to that tax is, *the sum needed* "to pay such execution and all costs." If one and one-half per cent will yield a sum sufficient to pay the execution and costs, in that case one and one-half per cent. will be the rate for the levy; not because that rate happens to be the charter rate, but alone because it will produce the sum needed. If the sum needed requires a levy of ten or twenty per cent., such must be the rate of the levy, regardless of charter limits.

The construction given the Statute in Britton v. Platte City, has lately, (but before the institution of this suit,) received the emphatic endorsement, and approval of the legislature of Missouri. When the General Assembly in 1879 came, in obedience to a constitutional requirement, to revise all the statutes of the state in force, of a general nature, Section 77, of Ch. 160, (now Section 2415), was brought under consideration and an amendment was proposed by way of proviso, expressly restricting the court to a tax within the charter limits.

The amendment was rejected, both houses concur-

ring, (See Reviser's note to Section 2415, Revised Statutes of 1879, Vol. 1, p. 405), and the section was adopted and re-enacted just as it had stood upon the statute book for the previous fourteen years; and this too, we think it is not too much to say, with the full knowledge on the part of the members of that body of the uniform construction which had been given to it by the courts for the previous eight years. The construction then contended for by the respondents is opposed alike by the courts, and by the law making power, and, we may add further, by the plain words of the law.

Again, upon the construction claimed by the plaintiffs, neither the general law (Section 2415), nor the charter provision (Sec. 23, Art. VII), is of any utility whatever. Neither adds one tittle to the creditor's common law rights. The statutes out of the way, and the city council refusing to levy a tax to pay a judgment creditor, can there be any doubt that mandamus at common law would lie to compel a levy within the charter limit? The authority to create the debt imposes the duty of providing for its payment, and if no special mode is prescribed, the proper mode is the levy and collection of taxes under the provisions of the charter.

Dillon on Municipal Corp., Sec. 685.

The provisions of Section 23 of Art. VII, not only do not help the creditor upon the construction contended for, but they are positively hurtful to him, for example: the city has power to levy not exceeding one and one-half of one per cent taxes. In the exercise of this power she levies *one-fourth* of one per cent. per annum, and no more, leaving one and one-fourth of one per cent unexhausted. At common law the creditor could by mandamus avail himself of this unexpended one and one-fourth of one per cent, but proceeding under the statute, he can not get exceeding one per cent, and thus, by reason of this statute he loses the remaining one fourth of one per cent. The law-maker intended the section to be a sword

for the creditor, but the plaintiff's construction of it converts into a shield for the debtor.

IV.

The Circuit Court having power, in virtue as well of Sec. 23, Art. VII, of the charter as of Sec. 2415 of the general law, to compel a levy of taxes in excess of the charter rate, the fourth question certified, like the first, second and third, must receive an affirmative answer.

V.

The return of the respondents to the alternative mandamus was insufficient, and the demurrer thereto was properly sustained.

The remedy sought in this case is a common law remedy regulated by statutory provisions, and the right to that remedy depends alone upon statutory grounds. It is a remedy of universal application. It is given by the plain words of the statute, against *all* incorporated towns and cities in the state. The creditor is entitled to his mandamus as a matter of right, whenever the statutory conditions exist, irrespective of whether there may not be some other adequate remedy. The statute declares that—

"Section 2415, Whenever an execution * * * * against *any* incorporated town or city shall be returned *unsatisfied*, in the whole or in part * * * * such court * * * * may by writ of mandamus, order and compel," the levy and collection of "a *special* tax," to pay the execution and costs.

"Section 2416. The court shall determine the time within which the levy and collection of such tax shall be made, and shall make all necessary orders to secure the prompt and speedy payment of such debt."

The conditions necessary by the statute to the granting of the mandamus are all distinctly averred in the alternative writ. The return makes denial of none of them, but, on the contrary, the truth of them stands confessed. Upon the facts alleged, and thus admitted, the order for a peremptory mandamus was inevitable.

Britton v. Platte City, 2 Dillon R., 1.
Butz v. Muscatine, 8 Wall., 580.

But if it were possible to hold that the general law was inapplicable to the City of Louisiana, still the judgment is right and must stand, because all the facts necessary to the relief afforded by Section 23 of Art. VII of the charter were alleged in the alternative mandamus, and were confessed by the return, and the judgment is within the limitations of that section—the amount ordered to be paid in each year being less than one per cent. of the assessed value of the property (907,200 dollars) subject to taxation by the city.

The rights and remedies given by this section are not given to *all* judgment creditors of the city *in solido*, as the plaintiff's counsel would seem to suppose, but are given to every judgment creditor, *severally*, whose debt has become due, and has remained unpaid for twelve months after demand made, *each for himself*. The language of the section is: "If at any time the city council shall fail to make suitable provision for the payment in whole or in part of *any* of its debts or liabilities, contracted after the passage of this act, or heretofore lawfully contracted, for the term of twelve months after such DEBT OR LIABILITY shall have become due and demand for payment made; it shall then be lawful for the Circuit Court or court of common pleas before which JUDGMENT of any such DEBT OR LIABILITY [singular number] shall have been obtained, to make and enter up any such orders, decrees and appointments, as may be necessary for levying, assessing and collecting taxes in the city, not exceeding one per cent. per annum, until *such*

DEBT OR LIABILITY [not plural *debts or liabilities*] shall be fully paid and discharged by the city authorities. *The amount so collected to be applied under the decree of the court*, STRICTLY TO THE PAYMENT OF SUCH DEBT OR JUDGMENT."

Any construction of the section which makes the limit of the annual taxes, authorized by its provisions to be a limit of those levied for all judgment creditors, *in solido*, and not for each alone, or which makes the amount raised by such taxes within that limit to be distributable *pro rata* among all such creditors and not payable alone to the particular judgment creditor proceeding under it, is not only at direct variance with its plain language as quoted above, but also involves practical difficulties in its execution, which would well nigh nullify all the benefits given by it.

If the State Circuit Court or Court of Common Pleas (the two courts named therein), or the United States Circuit Court (as the case may be), when proceeding under it to enforce a judgment, can order a levy for no more than such proportionate part of one per centum per annum, as the amount of the judgment to be enforced bears to the sum of all of the judgment debts of the city, then, before proceeding to so order, it must first ascertain what and how many of such debts there are altogether. It must in so doing consider not only what judgments have already been rendered by it, but also what by any other courts. Nay, more, it must also determine what debts there are outstanding which may fall within the provisions of the section on which no judgment has been obtained in any court but upon which one may be obtained within a year. To do this effectually so as to conclude all parties, it would be necessary by some process to bring all such creditors or all persons supposed to be creditors before the court, and to order their several rights and interests enforced by one decree. And if

when one creditor had already obtained a judgment, the amount of it should be so great as that a levy of taxes at one per cent per annum would not suffice to pay it for several years, other creditors whose debts should subsequently fall due, would be obliged, after obtaining like judgments for their debts to wait in the enforcement of them until the earlier judgment creditor who had already obtained his order for successive levies to the full limit in several years had been entirely satisfied. In such a case the hands of the court rendering the later judgments would practically be tied by the prior action of another court which had rendered the earlier judgment. Thus the remedy furnished by the statute which on its face would seem to be speedy, full and effective, in favor of all contracting with the city, and to guarantee to each the right to a prompt levy of a tax of at least one per centum per annum to pay his debt when due for twelve months, would by construction be made cumbersome, inadequate and imperfect, and to guarantee him, not one cent per per annum at once, but only a proportionate part of such per cent., whenever prior judgments requiring a levy of that amount should by previous orders of other courts have been fully satisfied. A construction which would lead to such results, we submit, is warranted by nothing either in the section itself or in the other provisions of the charter. We submit that the plain meaning of the section is to authorize each judgment creditor, whose debt is past due more than twelve months and unpaid, after demand made, to have a levy of not exceeding one per cent in any one year to pay his judgment, regardless of what rate of taxes may have been already ordered by the same or any other court in favor of any other creditor; and, that therefore, the order in this case of levies for three successive years of amounts less than one per cent. per annum was right.

JOHN D. S. DRYDEN,
Of Counsel for Defendant in Error.

REPLY OF DEFENDANT IN ERROR TO SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

The learned counsel for the plaintiff in his supplemental brief (page 8) makes an issue with us upon the proposition that § 77 of Ch. 160 of the law of 1865 was revised and re-enacted without change by the General Assembly in 1879. The question is not one of vital importance, but for the vindication of the truth of history, if for no other consideration, we make the following reply:

The counsel concedes that a proviso was rejected, but says we are mistaken in supposing that the proviso so rejected was the proviso of § 2415. He says "that the proviso which was rejected was a part of senate bill No. 52, introduced by Senator Wilson," and affirms that the bill which ripened into Ch. 32 of which § 2415 is part, was not senate bill No. 52, but was senate bill 358, introduced by Senator Lakenan. He is right in saying the rejected proviso was a proviso proposed to bill 52, but he is in error in affirming that senate bill 358 ripened into Ch. 32. This is the truth, as the journals of the two houses plainly show. Bill 52 was a *revising bill*—a bill to *revise* Chapter 160 of the General Statutes of 1865, inclusive of section 77, and contained about eighty sections. Bill 358, on the contrary, was an *original bill;* it was a bill having one section, and one only, and having no connection whatever with § 2415: its office being to provide for the exemption of certain property of counties, cities and towns from levy and sale under execution and attachment. The bill became a law and was published among the Session Laws of 1879 at page 88, and was

placed by the revisers in chapter 32, and was numbered section 2345, where it is now found. [See revised statutes of 1879, p. 392] In confirmation of what we have said, we refer, for history of Senate Bill, 52, to Senate Journal, pp. 679 and 680; and to House Journal pp. 1250, 1251 and 1252; and for history of bill 358 to Senate Journal, pp. 525, 530, 613, 698, 781, 797, 810; and House Jour, pp. 1284, 1347 and 1386. ☞(Said journals are herewith deposited with clerk of this court.)

Lakenan's law,—being bill No. 358, is found, as already stated, in the session laws of 1879, p. 88, and is in these words:

"*An Act concerning Executions.*—Be it enacted by the General Assembly of the State of Missouri, as follows: Section 1. All fire engines, hose, hose carriages, hooks, ladders, buckets, horses and other things kept and used for the purpose of extinguishing fires, owned by any county or municipality in this state, shall be exempt from attachment and execution. Approved, May, 8, 1879."

The identity of this law of the eighth of May, with bill No. 358, is established by the Governor's approval on the same day of a bill of the same number, and same title.

Senator Lakenan's bill contributes one section, and one section only, to the eighty-two sections composing chapter thirty-two. With few exceptions the other sections are but a reprint of chapter 160, of the law of 1865, as a comparison of the two chapters will show.

JOHN D. S. DRYDEN,
For Defendant in Error.

APPENDIX TO BRIEF AND RECORD.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1880.

MAYOR AND COUNCIL OF THE CITY OF LOUISIANA, *Respondents and Plaintiffs in Error.*

v.

THOMAS J. WOOD, *Relator and Defendant in Error,*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF MISSOURI.

On the 5th day of April, 1880, the following proceedings were had in the above entitled cause, in the Circuit Court of

the United States, for the Eastern District of Missouri, and appear of record in said court, in the words and figures following, to-wit:

"UNITED STATES, *ex. rel.* THOMAS J. WOOD, *Relator*,
v.
THE MAYOR AND COUNCILMEN OF THE CITY OF LOUISIANA, *Respondents.*" } No. 1184.

"Now come the parties by their respective attorneys, and the court, having examined the question of law arising upon the demurrer of relator to the return of Respondents to the alternative writ of mandamus herein, and being now fully advised in the premises, finds the law thereon for the relator. It is therefore ordered that said demurrer be sustained."

And thereupon, on motion of relator, by his attorneys, it is ordered that a peremptory writ of mandamus issue herein, to be directed to the said respondents, commanding them forthwith to levy, and cause to be collected for the year 1880, a special tax upon the property made taxable by law, in said City of Louisiana, sufficient to pay the sum of Nine Thousand Dollars, upon the judgment heretofore rendered in favor of said relator, and against said City of Louisiana, for the sum of Twenty-two Thousand Two Hundred and Twenty-six Dollars and Forty Cents, with interest and costs; and further commanding the said respondents to levy, and cause to be collected, for the year 1881, a special tax sufficient to pay the sum of Nine Thousand Dollars upon said judgment; also to levy, and cause to be collected, a special tax, for the year 1882, sufficient in amount to fully pay off and discharge the balance then remaining due and unpaid upon the said judgment, interest and costs; and the said several amounts, as and when collected, to apply to the payment of said judgment, interest and costs; and that they certify perfect obedience to said writ and said several

commands, respectively, on the 1st day of November of each of said years 1880, 1881 and 1882."

Now, as the said proceedings were inadvertently omitted from the record certified by the clerk of said Circuit Court to this court; in order to supply said omission without expense or delay, the parties to this cause hereby stipulate and agree that the Supreme Court may use and consider a duly certified copy of the said proceedings hereinbefore set out, and give them the same force and effect as if the same had been transcribed and inserted into the said record, certified as aforesaid by said clerk; and that neither party shall suffer any harm by the omission. The Brief of each party shall be accompanied with a printed copy of this agreement, and the original will be filed and preserved in the office of the Clerk of the Supreme Court.

D. P. DYER,
Attorney for Plaintiffs in Error.

JOHN D. S. DRYDEN,
Counsel for Defendant in Error.

Oct. 16, 1880.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 250.

MELISSA A. BARBOUR, A. K. DUNN, GUARDIAN OF MAGGIE BARBOUR AND MAY BARBOUR, APPELLANTS,

vs.

STEPHEN B. PRIEST, ASSIGNEE OF HUBBARD COLBY, A BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED OCTOBER 11, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 250.

MELISSA A. BARBOUR, A. K. DUNN, GUARDIAN OF MAGGIE BARBOUR AND MAY BARBOUR, APPELLANTS,

vs.

STEPHEN B. PRIEST, ASSIGNEE OF HUBBARD COLBY, A BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

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1 Pleas in the circuit court of the United States for the northern district of Ohio, held at the United States court rooms, in the city of Cleveland, in the district aforesaid, before the judges thereof, on Friday, the eighth day of March, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and second year.

EARL BILL, *Clerk.*

S. B. STURGES, ASSIGNEE,
v.
MELISSA A. BARBOUR ET AL. } In chancery.

NORTHERN DISTRICT OF OHIO, *ss:*

Be it remembered that on the twenty-seventh day of November, A. D. 1876, came said complainant, by Watson and Leyman, his solicitors, and filed in the office of the clerk of the circuit court of the United States for said northern district of Ohio, at Cleveland, in the district aforesaid, his transcript in said entitled cause, which transcript is in the words and figures following, to wit:

Transcript.

THE UNITED STATES OF AMERICA,
Northern District of Ohio:

At a stated term of the district court of the United States within and for the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in October, being the 3d day of said month, in the year of our Lord one thousand eight hundred and seventy six, and of the Independence of the United States of America the 101st—present the honorable Martin Welker, district judge—among the proceedings then and there had were the following, to wit:

2 STEPHEN B. STURGES, ASSIGNEE OF Hubbard Colby, bankrupt,
vs.
MELISSA A. BARBOUR, ELIZA B. KIMBALL, and A. K. Dunn, as guardian of May Barbour and Maggie Barbour, minors, &c. } Chancery.

Be it remembered that heretofore, to wit, on the 3d day of August, A. D. 1874, came the complainant, by his solicitors, and filed in the clerk's office of said court his bill of complaint, which is in the words and figures following, to wit:

Bill of complaint.

District court of the United States for the northern district of Ohio.

To the judge of the district court of the United States for the northern district of Ohio, in chancery sitting:

Stephen B. Sturges, a resident of the city of Mansfield, county of Richland, northern district of Ohio, and a citizen of the State of Ohio, as assignee of the estate of Hubbard Colby, a bankrupt, brings this his bill against said Hubbard Colby and Ruth Colby, his wife, Melissa A. Barbour, and James Dickson, residents of the city of Mansfield afore-

said, Allen B. Beverstock, a resident of Lexington, in said county of Richland, Eliza B. Kimball, a resident of the city of Columbus, county of Franklin, State of Ohio, all of whom are citizens of the State of Ohio, and the Dennison University, a corporation duly organized and incorporated under and by virtue of the laws of the State of Ohio, and having its place of business at Granville, county of Licking, and State of
3 Ohio, and the said Melissa A. Barbour, as guardian of the estate of May Barbour and Maggie Barbour, minors, and thereupon your orator complains and says:

That your orator is assignee of the estate and effects of said Hubbard Colby, who was, on the 16th day of December, A. D. 1873, duly adjudicated a bankrupt within the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, by the district court of the United States for the northern district of Ohio, sitting as a court of bankruptcy, upon the petition of James E. Nichols, a creditor of said Hubbard Colby, filed in said court on the 5th day of November, A. D. 1873, and on the 13th day of January, 1874, your orator received from Henry C. Hedges, one of the registers of said court to whom said matter in bankruptcy was referred an assignment, under the hand and seal of said register, of all the estate and effects of said bankrupt or to which he was entitled at the date of filing said petition, and your orator became duly qualified and entered upon the discharge of his duties, and still continues such assignee.

That said Melissa A. Barbour was the duly appointed and qualified guardian of the estates of May Barbour and Maggie Barbour, minor children of Justus S. Barbour, deceased, so appointed by the probate court for the county of Richland and State of Ohio.

That there came to the hands of your orator, as a part of the estate of said Hubbard Colby, the real estate situate in the county of Richland hereinafter described, to wit, the northeast quarter of section twenty, township twenty-one, range eighteen, excepting therefrom about two and one-fourth acres of land lying in the northeast corner of said quarter section, bounded on the north by the Leesville road from Mansfield, and on the west by the township road, being the same lot sold to
4 Lucius Dunham; also excepting part of said quarter heretofore sold to Reed and Underwood, to wit, beginning at the southwest corner of said quarter section; thence east on the south boundary line $46\frac{6}{10}$ rods; thence north and parallel with the west boundary line $66\frac{6}{10}$ rods to the center of the Leesville road; thence with said road south 75 $\frac{3}{4}$° west $47\frac{4}{10}$ rods to the west boundary line of said quarter; thence south on the west boundary line $58\frac{7}{10}$ rods to the place of beginning, containing $18\frac{1}{4}$ acres; also excepting lots numbered 105, 108, 109 in Bill's addition to out lots to the city of Mansfield.

There also came to the hands of your orator, as a part of the said estate, the following lots of land situate in said county of Richland and northern district of Ohio, to wit, lots numbered 106, 107, 110, 111, 112, and 113 in Bill's addition, to out lots to the city of Mansfield; also the undivided half of 108 feet off of the east end of inlot number 129, in the city of Mansfield, in said county of Richland.

Your orator further complains that on the 1st day of October, A. D. 1873, the same being within two months prior to the filing of said petition against the said Hubbard Colby, in bankruptcy, the said Hubbard Colby then being insolvent and contemplating bankruptcy, made a pledge, disposition, and conditional conveyance of said real estate, excepting said undivided half of said 108 feet-off of the east end of lot 129 to the

said Melissa A. Barbour, defendant, with the intent to prefer her, the said Melissa A. Barbour, who was then a creditor of the said Hubbard Colby, and who held a claim against said Hubbard Colby, in her own individual right, as well as the guardian of Maggie Barbour and
5 May Barbour, minor children of Justus S. Barbour, dec'd, the exact amount so owing to said Melissa A. Barbour as in her individual right and the exact amount so owing to her as such guardian your orator has not the means of ascertaining or stating; that said conveyance was by mortgage deed executed in the form of law by the said Colby to said Melissa A. Barbour, which mortgage deed was duly left for record with the recorder of said county of Richland on the 1st day of October, 1873, and was by said recorder duly recorded in volume 16, page 1 of the mortgage records of said county; that said deed had a condition thereunder written as follows:

"That whereas said Hubbard Colby has been and now is administrator of the estate of Justus S. Barbour, deceased, late husband of the said Melissa A. Barbour, and has remaining in his hands as such administrator a large amount of money, to wit, $22,722.20 (twenty-two thousand seven hundred and twenty-two and $\frac{20}{100}$ dollars), which is due to the said Melissa A. Barbour as the widow of said decedent and as guardian of Maggie Barbour and May Barbour, two minor children of said deceased; now, if the said Hubbard Colby shall well and truly pay to the said Melissa A. Barbour the amount of said money in his hands, as he is required by law to do, then these presents shall be void, otherwise to be and remain in full force and virtue in law."

That said Melissa A. Barbour, at the time she received said mortgage, pledge, and conveyance of said real estate, had reasonable cause to believe that said Hubbard Colby was insolvent and contemplating bankruptcy, and your orator charges upon his information and belief that at said time the said Melissa A. Barbour knew that Hubbard Colby, by said conveyance and pledge of said real estate, intended a fraud upon said bankrupt act, and that said conditional conveyance, pledge, and transfer was so made in fraud of the provisions of said act.

6 And your orator further complains that on said 1st day of October, A. D. 1873, at the same time with the execution of the said mortgage deed above described, and as a part of the same transaction, the said Hubbard Colby, by his mortgage deed of that date executed in the forms of law and delivered to the said Melissa A. Barbour, made a conditional conveyance, transfer, disposition, and pledge of said real estate above described as 108 feet off the east end of lot one hundred and twenty-nine (129), in the city of Mansfield, in said county of Richland, with the intent to prefer her, the said Melissa A. Barbour, who was then a creditor of him, the said Hubbard Colby, as well in her own individual right as aforesaid and as guardian of the estate of Maggie Barbour and May Barbour, minor children of Justus S. Barbour, deceased, and to secure the same indebtedness to said Melissa A. Barbour, hereinbefore set forth, the exact amount so owing to said Melissa A. Barbour in her individual right and the amount so owing to her as such guardian your orator has not the means of ascertaining and cannot state; said deed had a condition thereunder written, of which the following is a correct copy, to wit:

"Provided always, and these presents are upon this condition, that whereas the said Hubbard Colby has been, and now is, the administrator of Justus A. Barbour, deceased, late husband of the said Melissa A. Barbour, and has remaining in his hands as such administrator a large amount of money, to wit, $22,722.20, which is due to the said Me-

lissa A. Barbour as the widow of said decedent, and as the guardian of Maggie Barbour and May Barbour, minor children of the said decedent:

7 Now, if the said Hubbard Colby shall well and truly pay to the said Melissa A. Barbour the amount of said money in his hands, as he is required by law to do, then these presents shall be void, otherwise to remain in full force and virtue."

That said deed was, on the said 1st day of October, A. D. 1873, left with the recorder of said county of Richland for record, and the same was by said recorder duly recorded in the mortgage records of said county of Richland, in volume 15, page 664.

Your orator further says that said Hubbard Colby, at the time of the making of said conveyance, pledge, and transfer to the said Melissa A. Barbour, was insolvent and contemplating bankruptcy. That said Melissa A. Barbour, at the time she so received said pledge and conveyance, had reasonable cause to believe that said Hubbard Colby was insolvent, and your orator charges upon information and belief that said Melissa A. Barbour then knew that said conveyance and pledge was made by said Hubbard Colby, with the intent to commit a fraud upon said bankrupt act, and that said conveyance and pledge was made in fraud of the provisions of said bankrupt act.

Your orator further complains that on the 8th day of October, 1873, the said Hubbard Colby then being insolvent and contemplating bankruptcy, and then being indebted to Allen B. Beaverstock, above named, in the sum of about $8,000 upon two promissory notes, one for $2,000, dated May 4th, 1870, payable one year after date, the other for six thousand dollars, dated July 6th, 1872, made a pledge and conditional conveyance to the said Allen B. Beverstock of a part of the real estate hereinbefore described, to wit, said undivided half of 108 feet off the east end of in lot number 129, in the city of Mansfield, by a mortgage deed of that date, which deed had a condition thereto, that if said

8 Hubbard Colby should pay said promissory notes, according to their tenor and effect, then said conveyance should be void.

That on the 9th day of October, A. D. 1873, said mortgage was duly left with the recorder of said county of Richland for record, and the same was recorded in the mortgage records of said county in volume 16, page 13.

That said Allen B. Beverstock, at the time he received said conditional conveyance and pledge aforementioned, had reasonable cause to believe that said Hubbard Colby was insolvent, and at the same time, as affiant charges upon information and belief, he, the said Allen B. Beverstock, knew that said Colby, by said conveyance, intended to commit a fraud upon said bankrupt act, and that said conveyance was made in fraud of the provisons of said act.

Your orator further says that said Eliza B. Kimball claims some lien upon said undivided half of 108 feet off of the east end of said lot 129, in the city of Mansfield, under a mortgage deed dated April 16th, 1873, for the sum of about $7,000.

Your orator further says that said James Dickson claims a lien upon said real estate, being 102 acres, situate in the northeast quarter of section 20, township 21, range 18, in said county of Richland, by virtue of a certain mortgage deed, dated December 6th, 1864, for about the sum of $4,000, executed by one Peter Bill.

That said Dennison University also claims a lien upon said last-mentioned real estate, by virtue of a certain mortgage deed, dated March 27th, 1872, for about the sum of $7,500, executed by said bankrupt and wife.

9 Your orator further says that said Ruth Colby, wife of said Hubbard Colby, claims some interest or title to the real estate herein described, the exact nature of which claim your orator cannot state.

Your orator therefore prays that said Ruth Colby and Hubbard Colby, his wife, may be made parties defendant to this bill of complaint, and be required to answer, setting forth fully and particularly the nature, consideration, &c., of their claims upon or interest, if any, claimed in said real estate or any part thereof, and that said Melissa A. Barbour be also made a party defendant hereto and be required to answer, setting forth fully and particularly the nature of her claim upon said real estate, and that she be required to respond to all and singular the allegations of this bill touching her said mortgage claim.

That said Melissa A. Barbour, as guardian of May and Maggie Barbour, may also be made parties defendant hereto and be required to answer all and singular the matters complained of in this bill touching said mortgage deeds to said Melissa A. Barbour so far as she claims any interest in or lien upon said premises or any part thereof under said mortgage deed as such guardian.

Your orator also prays that said Allen B. Beverstock may also be made a party defendant hereto and be required to answer all and singular the allegations in this bill touching his said mortgage claims upon said real estate, and that he set forth fully and particularly the nature, amount, and consideration of the claim or liens asserted by him upon said real estate or any part thereof, and whether any usurious interest is included therein; and that said Eliza B. Kimball may be made a party defendant hereto and be required to answer, setting forth fully
10 and particularly the nature, consideration, and date of her lien upon said real estate or any part thereof, and whether any usurious interest is included therein; and that said James Dickson may be made a party defendent hereto, and be required to answer, setting forth fully and particularly the nature, consideration, and date of his lien upon said real estate or any part thereof, and whether any usurious interest is included therein; and that said Denison University may be made a party defendant hereto, and be required to answer, setting forth fully and particularly the nature, consideration, and date of its lien as well as the exact amount thereof, and whether any usurious interest is included therein.

Your orator further prays that said mortgage deeds and pledges of said real estate from said Hubbard Colby to said Melissa A. Barbour, dated October 1st, 1873, may each be adjudged fraudulent and void as against your orator as such assignee, and that the same may be set aside. That said mortgage deed from said Hubbard Colby to said Allen B. Beverstock, dated October 8th, 1873, may be decreed and adjudged fraudu'ent and void as against your orator as such assignee, and that the same be set aside. That the nature and extent of the claim upon or interest in said real estate held by said Ruth Colby, wife of said bankrupt, as well as her dower estate, if any she has in said real estate, may be ascertained by decree of your honor.

Your orator further prays that he may, at the earliest day that his prayer may be heard, be authorized to sell all of said real estate and property unincumbered and free from all liens and claims what-
11 ever, and that the liens and interests upon and in said premises may be transferred from said property to the funds arising from such sale, and that all questions as to the validity, amounts, rank, and priority of the several liens be heard and determined by your honors at

a future day, and that such other and further relief may be granted unto your orator as the nature of the circumstances of this case may require and to this honorable court may seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America issuing out of and under the seal of this honorable court, directed to the said Hubbard Colby and Ruth Colby, his wife, Melissa A. Barbour in her own proper capacity, and to said Melissa A. Barbour as guardian of the said May Barbour and Maggie Barbour, minors, and to said Allen B. Beverstock, James Dickson, Eliza B. Kimball, and the Dennison University, commanding them on a certain day therein named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide such furth orders, directions, and decrees as may be made against them, and yo orator as in duty bound will ever pray, &c.

MATSON AND LEYMAN,
Solicitors for Complainant.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Stephen B. Sturges, being duly sworn, deposeth and saith that he is the complainant in the foregoing bill named, and has read the same and knows the contents thereof. That the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

STEPHEN B. STURGES.

12 Sworn to before me and subscribed in my presence this 27th day of July, A. D. 1874.

H. C. HEDGES, *Register.*

Waiver of process, &c.

Said bill was endorsed as follows, to wit:

We, the undersigned defendants mentioned in the within bill of complaint, hereby waive the issuing and service of process of subpœna upon us respectively in the within entitled cause and enter our appearance therein.

ELIZA B. KIMBALL,
Per H. M. WEAVER.
JAMES DICKSON.

And thereupon there was duly issued herein by the clerk of said court a certain supœna in chancery, which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to the marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon Hubbard Colby, Ruth Colby Melissa A. Barbour, Allen B. Beverstock, the Dennison University, and Melissa A. Barbour, guardian of May and Maggie Barbour, if they be found in your district, to be and appear in the district court of the United States for the northern district of Ohio aforesaid, at Cleveland, on the

first Monday in September next, to answer a certain bill in chancery, filed and exhibited in said court against them and others by Stephen B. Sturges, assignee of Hubbard Colby, bankrupt. Hereof they are not to fail, under the penalty of the law thence ensuing. And have you then and there this writ.

Witness the honorable Martin Welker, judge of said court, at
13 Cleveland, in said district, this 3d day of August, A. D. 1874, and in the 99th year of the Independence of the United States of America.

[SEAL.] EARL BILL, *Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of September, 1874, otherwise the said bill may be taken pro confesso.

EARL BILL, *Clerk.*

Said summons was returned August 8th, 1874, endorsed as follows:

NORTHERN DISTRICT OF OHIO, *ss:*

On the 8th day of August, 1874, I delivered a true copy of this writ, duly certified, to each of the within named, Ruth Colby and Melissa A. Barbour, and also a true and duly certified copy thereof to Melissa A. Barbour, as guardian of May Barbour and Maggie Barbour, and left a true and duly certified copy thereof at the usual place of abode of Hubbard Colby, in the hands of his wife Ruth, at Mansfield, Ohio, the said Hubbard Colby being absent from home. On the 15th day of August, 1874, I deliver a true and duly certified copy of this writ to the within named Allen B. Beverstock, at Lexington, Richland County, Ohio. The within named Dennison University is not found in this district.

N. B. PRENTICE,
U. S. Marshal.
By WM. M. HAHN,
Deputy.

And afterwards, to wit, on the 5th day of October, A. D. 1874, the answer of Melissa A. Barbour was duly filed herein in said clerk's office, which is in the words and figures following, to wit:

Answer of M. A. Barbour.—Filed Oct. 5th, '74.

District court of the United United States for the northern district of Ohio.

The separate answer of Melissa A. Barbour, one of the defendants, to the bill of complaint of Stephen B. Sturges, assignee of Hubbard Colby, bankrupt, complainant.

14 This defendant, now and at all times hereafter saving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant advised it is material or necessary for her to make answer to, answering, saith: That the said Hubbard Colby was the duly appointed administrator on the estate of one Justus

S. Barbour, deceased; that this defendant was the widow of said Justus S. Barbour; that Maggie Barbour and May Barbour were minor children of the said Justus S. Barbour, and this defendant was the guardian of the property of said Maggie Barber and May Barber, on the first day of October, 1873; that said Hubbard Colby, at that date, had, as such administrator as aforesaid, in his hands a large amount of money arising from the assets of said estate of said decedent, to wit, he sum of $24,594.83, belonging to this defendant as the widow of the said Justus S. Barbour, and to the said Maggie Barber and May Barbour, as the only children and heirs at law of *of* said Justus S. Barbour, deceased, and to secure the payment of said money to said widow and children, the said Hubbard Colby, on the first day of October, A. D. 1873, executed and delivered to this defendant the two mortgages named in said bill of complaint on the premises as described and set forth in said bill; that since the execution of said mortgage and the record thereof, and prior to the filing of said bill of complaint, this defendant ceased to be the guardian for the property of the said Maggie Barbour and May Barbour;
15 that there is due to this defendant on said claim in said mortgage mentioned the sum of $4,265.63, with interest thereon from the 1ts day of October, A. D. 1873.

This defendant, in further answering, says it is not true, as alleged in said complainant's bill, that this defendant, at the time she received said mortgages, or either of them, in said bill mentioned, had reasonable cause to believe that said Hubbard Colby was then insolvent or contemplating bankruptcy, and denies that she knew that said Hubbard Colby intended by said mortgages, or either of them, a fraud upon said bankrupt act, and denies that said mortgages, or either of them, were made in fraud of the provisions of said bankrupt act, and on the contrary avers that at the time of the execution and delivery of said mortgages to her as aforesaid, and prior thereto, that this defendant fully believed that the said Hubbard Colby was solvent, and abundantly able to pay all his debts, and was worth from one hundred thousand to two hundred thousand dollars over and above all indebtedness against him, and believes that said Hubbard Colby was doing a large, prosperous, and lucrative business, and was able to meet all his engagements of a pecuniary character, and this defendant denies all and all manner of unlawful combination, fraud, fraudulent intention, and confederacy, wherewith she is by said bill charged, without this that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby, well and sufficiently answered and confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing
16 to aver, maintain, and prove as this honorable court shall direct, and prays that her interest in, and mortgage-liens upon, said estate may be by the court protected and enforced against said real estate, and the priority of the liens on said real estate set forth in said bill of said complainant adjusted and settled, and that this defendant may have such other and further relief as equity and good conscience may require.

A. K. DUNN,
Solicitor for Melissa A. Barbour.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Melissa A. Barbour, being duly sworn, deposes and says that all the several matters and things set forth in the foregoing answer as from

the information of others I believe to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

MELISSA A. BARBOUR.

Sworn to before me by Melissa A. Barbour, and by her subscribed in my presence, this 22d day of September, A. D. 1874.

HENRY C. HEDGES,
Register.

And afterward, to wit, on the 6th day of January, A. D. 1875, the answer of Eliza A. Kimball was duly filed herein in said clerk's office, which is in the words and figures following, to wit:

Answer of Eliza B. Kimball.—Filed Jan. 6th, '75.

In the district court of the United States for the northern district of Ohio. Chancery.

STEPHEN B. STURGES, ASSIGNEE OF THE ESTATE of Hubbard Colby, a bankrupt,
against
MELISSA BARBER, ELIZA B. KIMBALL, ET AL., defendants.

Separate answer of Eliza B. Kimball.

17 Now comes the defendant above named, Eliza B. Kimball, and for answer to the matters and things set forth in the plaintiff's bill of complaint, or to so much thereof as it appeareth necessary for her to answer, saith:

That she, the said Eliza B. Kimball, has a lien upon the real estate and premises in the said bill described as part of inlot number one hundred and twenty-nine (129), in the city of Mansfield, in the county of Richland and State of Ohio, being the undivided half of 108 feet off of the east of said lot, to secure the payment to her of the sum of seven thousand dollars in money owing to her by the said Colby, which lien was acquired by her as follows, to wit:

On the 16th day of February, A. D. 1873, this defendant loaned to the said Hubbard Colby, the bankrupt in the bill of complaint named, the sum of seven thousand ($7,000) dollars in money, for which the said Hubbard Colby then executed and delivered to this defendant his promissory note of that date, whereby the said Colby promised to pay to this defendant the sum of $7,000 in 3 years from said 16th day of April, A. D. 1873.

That on said day the said Hubbard Colby, being the owner in fee simple of the said premises herein described, together with Ruth, his wife, for the purpose of securing the payment of said promissory note according to its tenor and effect, did, by their deed of conveyance duly executed, acknowledged, and delivered to this defendant, convey to her and her heirs and assigns forever the said real estate, which deed of conveyance had a condition thereunder written that if the said Hubbard Colby should pay or cause to be paid to this defendant said promissory note, and the money to become due thereon, according to
18 its tenor and effect, then said deed should be void; otherwise to remain in full force.

That on the 23d day of April, A. D. 1873, at 3 o'clock p. m., said mortgage deed was duly left with the recorder of said county of Richland for record, and said mortgage deed was on the 30th day of April, A. D. 1873, duly recorded in the mortgage records of said county, in volume 15, page 408, whereby this defendant perfected her lien on said premises.

That no part of said sum of $7,000 has ever been paid, but the full amount thereof is still owing by the said Hubbard Colby to this defendant, and the said mortgage to secure the same is the first and subsisting lien upon said premises.

This defendant therefore prays that her lien and interest in and upon said premises may be fully protected and respected by the court, and that in any sale or disposition of said real estate by order of this court the amount of said lien may be fully paid to this defendant, and for such other and further protection and relief as equity and the nature of the case demands.

ELIZA B. KIMBALL, *Def't*,
By MATSON AND LEYMAN,
Her Solicitors.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, County of Richland, ss:

Henry M. Weaver, being by me first duly sworn according to law, deposes and says that the defendant, Eliza B. Kimball, above answering, is a non-resident of said northern district of Ohio, and now absent therefrom; that affiant is her duly authorized agent and attorney in fact in the premises, and has personal knowledge that the facts stated and matters set forth in the foregoing answer are true as he verily believes.

19

HENRY M. WEAVER.

Sworn to before me and subscribed in my presence this 2d day of January, A. D. 1875.

[SEAL.]

GEORGE MOREHOUSE,
Notary Public, Richland County, Ohio.

And afterwards, to wit, on the 3d day of June, A. D. 1875, the answer of A. K. Dunn, guardian, was duly filed herein in said clerk's office, which is in the words and figures following, to wit:

Answer of Dunn, guardian, &c.—Filed June 3d, '75.

District court of the United States for the northern district of Ohio.

The separate answer of A. K. Dunn, as guardian of Maggie Barbour and May Barbour, defendants, to the bill of complaint of Stephen B. Sturges, assignee of Hubbard Colby, a bankrupt, complainant.

This defendant, now and at all times hereafter reserving to himself and his said wards all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith:

That the said Hubbard Colby, defendant, was the duly appointed administrator of the estate of Justus S. Barbour, deceased; that said

Maggie and May Barbour are the minor children of the said Justus A. Barbour, and the said A. K. Dunn is the duly appointed guardian of the property of the said Maggie Barbour and May Barbour, and was appointed such guardian on the 29th day of January, A. D. 1874; that prior to and up to the said time the said Melissa A. Barbour was the guardian of the property of the said minor children, including
20 the first day of October, A. D. 1873, and some time prior thereto; that said Hubbard Colby, on the first day of October, A. D. 1873, had, as such administrator as aforesaid, in his hands a large amount of money arising from the assets of said estate, to wit, $24,594.83, belonging to said minors and the said Melissa A. Barbour, as the widow of said decedent, and his heirs at law, and in order to secure the payment of said moneys to said widow and said minor children, and the said Hubbard Colby, on the first day of October, A. D. 1873, executed and delivered to the said defendant, Melissa A. Barbour, the two mortgages named in said bill of complaint, on the premises as described and set forth in said bill, and that there is due to this defendant, as the guardian as aforesaid of the said Maggie Barbour and May Barbour, the sum of $20,329.20, with interest thereon from the first day of October, A. D. 1873, on said mortgages.

This defendant, in further answering, says it is not true, as alleged in said complainant's bill, that the said Hubbard Colby, on the 1st day of October, A. D. 1873, when he made the mortgages in the said bill mentioned to the said Melissa A. Barbour, was insolvent or contemplating bankruptcy, or made said mortgages with the intent to prefer her, as the creditor of the said Hubbard Colby in her individual right, or as the creditor of the said Hubbard Colby as the guardian of the said Maggie or May Barbour, or as the guardian of either of them; or that the said Melissa A. Barbour, at the time she received said mortgages, or at the time of the execution thereof, had reasonable cause to
21 believe that the said Hubbard Colby was insolvent or contemplating bankruptcy, or that the said Melissa A. Barbour then knew that the said Hubbard Colby by said conveyances intended a fraud on said bankrupt act, or knew that said conveyances were made in fraud of the provisions of said bankrupt act.

And this defendant denies all and all manner of unlawful combination, fraud, or fraudulent intention or confederacy charged in said bill, without this, that there is any other matter or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays that the interest of this defendant in, and mortgage liens on, said real estate may be by the court protected and enforced against said real estate, and that this defendant may have such other and further relief as equity and good conscience may require.

A. K. DUNN,
As guardian of Maggie Barbour and May Barbour.

UNITED STATES OF AMERICA,
Northern District of Ohio:

I, A. K. Dunn, being duly sworn, depose and say that all the matters and things set forth in the foregoing answer as from the information of

others I believe to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

A. K. DUNN.

Sworn to before me by A. K. Dunn, and by him subscribed in my presence, this 3d day of June, A. D. 1875.

CHAS. H. BILL,
U. S. Com'r, N. D. O.

22 And afterwards, to wit, at the October term of said district court, to wit, on the 14th day of October, A. D. 1876, this cause coming on to be heard upon the bill, answers, and replications, and upon the proofs, and being maturely considered, the court is of the opinion that the equity of the case so far as regards the parcel of land described as the one hundred and eight (108) feet off of the east end of lot one hundred and twenty-nine in the city of Mansfield, in said county of Richland, the equity of the case as between the said Allen B. Beverstock and the complainant is with the complainant, and as between the complainant and the defendants, Melissa A. Barbour, Maggie Barbour, May Barbour, A. K. Dunn, as guardian of said Maggie and May Barbour, and as between Eliza Kimball, the equity of the case is with the said defendants, and their said mortgages are valid liens on the premises therein described, and thereupon do order, adjudge, and decree that the mortgage deed of the said Allen B. Beverstock on said parcel of land be and the same is hereby set aside and annulled as fraudulent and void.

And it is further ordered, adjudged, and decreed that the said mortgages to the said Melissa A. Barbour and Eliza Kimball be and the same are held as valid mortgages on said premises, and that the said Melissa A. Barbour, Maggie Barbour and May Barbour, and A. K. Dunn, recover of the complainant their costs herein.

And it is further ordered, adjudged, and decreed that the said complainant, as assignee as aforesaid, proceed to sell the said one hundred and eight feet off of the east end of lot number one hundred and
23 twenty nine (129) above described, on the premises, at public auction, to the highest bidder, after advertising the same sixty days in the Mansfield Herald, and that the rents and profits arising from said property from and after this decree until the same is sold be retained in the hands of said assignee, to be applied on said defendant's mortgages, as directed by this court, and bring of the proceeds of said sale any surplus over and above paying said mortgages into court, to abide the further order thereof; and as to the other lands in said bill mentioned, this cause is retained for further hearing; and thereupon came said complainant by his solicitors and gave notice of his intention to appeal this cause to the next circuit court of the United States within and for the northern district of Ohio, which said appeal is hereby allowed, and bond therefor is fixed in the sum of $1,000.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, Earl Bill, clerk of the district court of the United States within and for said district, do hereby certify that the within is a truly taken and copied from the record of the proceedings of said court in the therein entitled cause.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 27th day of November, in the year of our Lord one

thousand eight hundred and '76 and of the Independence of the United States of America 101st.

[SEAL.]

EARL BILL, *Clerk*,
By CHAS. H. BILL,
Deputy Clerk.

(Endorsed:) Filed Nov. 27th, '76. Chas. H. Bill, deputy clerk.

Afterwards, to wit, on the 4th day of December, A. D. 1876, there was filed in said clerk's office a stipulation waiving copy of testimony in this cause, which stipulation is in the words and figures following, to wit:

24

Stipulation waiving copy of testimony.

In the circuit court of the United States for the northern district of Ohio. Appeal in chancery.

STEPHEN B. STURGES, ASSIGNEE OF HUBbard Colby, bankrupt, complainant,
v.
MELISSA BARBOUR, A. K. DUNN, GUARDIAN of May and Maggie Barbour, and others, def'ts.
} Stipulation.

It is mutually agreed between the parties to the above cause that the copying of the testimony used on hearing of the said cause in the dist. court may be dispensed with and waived by both parties, and it is agreed that the original testimony and exhibits in evidence used on the said hearing shall be read in evidence and used wherever copies thereof or the originals are admissible instead of such transcript.

Nov. 28th, '76.

DIRLAM AND LEYMAN,
Solicitor for Complainant.
A. K. DUNN,
Sol. for Melissa A. Barbour et al

(Endorsed:) Filed Dec. 4th, '76. Chas. H. Bill, dep. clerk.

Afterwards, to wit, on the 1st day of June, A. D. 1877, said defendants, by their solicitor, filed in said clerk's office a motion in said entitled cause, which said motion is in the words and figures following, to wit:

Motion.

United States circuit court for northern district of Ohio.

25

STEPHEN B. STURGES, ASSIGNEE OF H. Colby, bankrupt,
v.
MELISSA A. BARBOUR ET AL.

Motion for order to retain funds.

And now come the defendants and move the court to make an order herein that the complainant, as the assignee of H. Colby, be required

to retain in his hands the rents and profits which have and which may accrue from the real estate in controversy in this cause, to be applied to the payment of the liens on said real estate, according to the priority of such liens.

A. K. DUNN,
Counsel for Defendant.

(Endorsed:) Filed June 1st, '77. Chas. H. Bill, dep. clerk.

Whereupon on the same day the defendants, by their solicitor, filed in said clerk's office a notice in said entitled cause, which notice is in the words and figures following, to wit:

Notice for application for order to retain and apply rents, &c.

United States circuit court, northern district of Ohio.

STEPHEN B. STURGES, ASSIGNEE OF H. COLBY, bankrupt,
v.
MELISSA A. BARBOUR ET AL.

The plaintiff will take notice that application will be made in the above-entitled cause to said court by the defendants for an order in said cause requiring the plaintiff, as assignee, to retain in his hands the rents and profits arising and accruing out of the real estate in litigation in said cause, and to apply the same to the payment of the mortgage liens thereon, according to the priorities thereof; and that said application will be for hearing at the United States court-room, in the city of Cleveland, on Wednesday, the 30th day of May, A. D. 1877, at 9 o'clock a. m., or as soon thereafter as counsel can be heard.

A. K. DUNN,
Counsel for Defendants.

26 THE STATE OF OHIO,
Richland County, ss:

A. K. Dunn, being duly sworn, says that on the 26th day of May, 1877, he delivered to Dirlom and Leyman, counsel for complainants in the above-named case, a copy of the foregoing notice.

A. K. DUNN.

Sworn to and subscribed before me this 30th day of May, A. D. 1877.

JACOB HADE,
Notary Public, Richland Co., O.

(Endorsed:) Filed June 1st, '77. Chas. H. Bill, dep. clerk.

Afterwards, to wit, on the first day of June, in the April term of said court, in the record of the proceedings thereof in said entitled cause, before the honorable Martin Welker, district judge, is the following entry, to wit:

(Journal 8, page 478.)

This day came the parties, by their solicitors, and thereupon this cause came on to be heard on the motion of defendants for an order requiring the complainant, as assignee, to hold the proceeds of the rents

of the real estate in controversy in this suit in his hands, to be applied to the payment of the liens on the same, was argued by counsel; and the court being fully advised in the premises, and the said parties consenting thereto, do order said assignee to retain in his hands the proceeds of the rents of the real estate in controversy in this case, to be applied as may hereafter be determined by the court on the final hearing of this cause; and this cause is continued to the next term of this court.

And afterwards, to wit, on the 8th day of March, A. D. 1878, in the January term of said court, in the record of the proceedings thereof in said entitled cause, before the honorable John Baxter, circuit judge, is the following entry, to wit:

(Journal 9, page .)

27 This day came the parties to this cause, by their proper solicitors, and May Barbour and Maggie Barbour, minor defendants, appearing by A. K. Dunn, their legally appointed and qualified guardian of their estates, and it being made to appear to the court that Stephen B. Sturges named as complainant herein has resigned his trust as such assignee, and that Stephen B. Priest has been duly appointed and qualified as the successor of said Stephen B. Sturges as assignee of the estate of said Hubbard Colby, bankrupt, on motion of said Stephen B. Priest, assignee, it is by the court ordered that said Stephen B. Priest, assignee as aforesaid, be, and he is hereby, substituted in the place and stead of said Stephen B. Sturges as complainant herein, and said cause is ordered to proceed, without prejudice to the rights of complainant, in the name of said Stephen B. Priest, assignee.

Thereupon this cause came on to be heard and was submitted to the court, the honorable John Baxter, circuit judge, presiding, upon the bill of complaint of complainant, the answers of said Melissa A. Barbour and of A. K. Dunn, guardian of May Barbour and Maggie Barbour, infants, and the replication of complainant to said answers of said several defendants, the exemplification of the record and testimony had and taken in this cause, and exhibits, and was argued by counsel; on consideration whereof, and the court being fully advised in the premises, do find that the allegations and matters in the complainant's bill of complaint and replication alleged are true, and the averments and matters set forth in the answers of said several defendants, inconsistent therewith, are untrue; that the equity of this case is with the complainant; that the mortgages, deeds, transfer, and pledges of the real estate from Hubbard Colby, the bankrupt, to said Melissa A.
28 Barbour, and to said Melissa A. Barbour, guardian of said May Barbour and Maggie Barbour, in the bill of complaint mentioned and complained of, were and are each of them fraudulent and void in law and as against the complainant.

It is therefore considered, ordered, and decreed by the court that said deeds of mortgage, transfers, and dispositions of said premises to said defendants above named be, and the same are, adjudged void, and are set aside and wholly held for naught, and said premises in said bill of complaint described are declared and decreed to be clear and free from the same in the hands of said complainant, as assignee of said Hubbard Colby, bankrupt, as though said mortgages had not been executed.

And it is further ordered that the costs of this suit, incident to the litigation by and between the parties hereto in this court, and in the

said district court, to be taxed by the clerk, be paid by the said Stephen B. Priest out of the monies in his hands arising from the estate of said Hubbard Colby, and that he be allowed therefor in the settlement of his final accounts as such assignee.

As to each and all other issues, questions, and matters involved in this cause not herein decreed upon by this court, the same shall be, and is, continued.

And thereupon came the said defendants, Melissa A. Barbour and A. K. Dunn, guardian of Maggie Barbour and May Barbour, and gave notice of their intention to appeal this cause to the next term of the Supreme Court of the United States, which said appeal is allowed, and bond for said appeal is fixed at one thousand dollars.

Certificate of evidence.

UNITED STATES OF AMERICA,
Northern district of Ohio, ss:

29 In the circuit court of the United States for the northern district of Ohio. In equity.

S. B. STURGES, ASSIGNEE, COMPLAINANT,
vs.
MELISSA A. BARBOUR ET AL., DEFENDANTS.

Be it remembered that, on the eighth day of March, A. D. 1878, the day of the hearing of said cause, the following is a correct statement of the evidence and exhibits submitted to the court by the respective parties thereto, to wit:

In the district court of the United States for the northern district of Ohio. In chancery.

STEPHEN B. STURGES, ASSIGNEE OF HUBbard Colby, a bankrupt, plaintiff,
vs.
JAMES DICKSON, DENISON UNIVERSITY, ET AL., det'ts.

Testimony taken on the part of the plaintiff under the 67 rule of practice and its amendments for the courts of equity of the United States, by me, Stephen B. Priest, special examiner, duly appointed by the said court to take the testimony in said cause. Present, N. N. Leyman, esq., on behalf of complainant.

JAMES DICKSON, of lawful age, being by me first duly sworn, deposes as follows:

1st question by attorney for plaintiff. State your name, age, place of residence, and occupation.

Ans. My name is James Dickson; I am 45 years of age; I reside in Mansfield, Ohio, and am by occupation president of the Mansfield Banking Company.

Q. Are you the James Dickson, respondent herein, who claims a mortgage lien upon the premises described in the bill of complaint, as about 130 acres of land lying west of and in the city limits of Mansfield, Ohio?

30 Ans. I am.

Q. Have you the original note which said mortgage was given to secure; if so, please produce it to the examiner to be copied in your deposition?

Ans. I have it; here it is.

$4,000.00.] MANSFIELD, OHIO, *November 4th*, 1864.

Two years after date I promise to pay to the order of James Dickson four thousand dollars, value received.

(Signed) PETER BELL.

[Stamp. P. Bell. Dec. 21, 1864.]

(Indorsed as follows:)

Rec'd in'st in full to April 4th, 1869.
Rec'd in'st in full to April 4th, 1870.
Rec'd in'st to April 4th, '71.
Rec'd in'st to April 4th, '72.
Rec'd in'st to April '73.

I hereby certify that the foregoing is a true and correct copy of the note with the indorsements thereon handed me by the witness.

STEPHEN PRIEST,
Special Exam.

State what was the consideration for said note.

It was made up of claims that I bought against Peter Bell from different persons, as follows: One claim I bought of the First Nat. Bank, of Mansfield, Ohio; one claim I got of a man by the name of Wirt; one from Samuel Bell; one from David Bell; one from Neff; one from Robert Cairns and Loomis. I also bought an account in favor of F. Bird. That is all the claim that I recollect of. I cannot give the amounts of any of the claims positively, but I think the Neff claim was $394.14.

Q. What were those claims for? State fully, as far as you know.

31 Ans. I cannot state positively what these claims were for. I understood they were for dry goods and vendue notes. One of the claims I think I received of Stephen Weldon; it was a judgment against Peter Bell on Esqr. Little's docket; amount of the claim was $265.79. I understood that the note on which the judgment was rendered was given for a piano; I think the Samuel Bell claim, the Neff claim, and the David Bell claim were notes given to them by Peter Bell for things he had bought at sales. The other claims that I have spoken of I think were for dry-goods, except that one of F. Bird's, and that was for groceries.

Q. How did you become the owner of all these claims?

Ans. I bought them.

Q. What rate of interest, if any, was counted into or formed a part of the claims which made up the $4,000.00?

Ans. Six per cent. interest was counted on the claims, and embodied in the note of $4,000.

Q. What rate of interest, if any, was paid upon or counted into the claim before you bought them? State all you know on that subject.

Ans. I do not know anything about the interest.

Q. Did you receive anything from Peter Bell in the way of commis-

sion or otherwise in addition to the face of the claim as you bought them, except 6 per cent. int. as referred to, at any time?

Ans. I did not.

Q. Was anything carried into the note to make up the $4,000 besides the face of the claim as they existed when you bought them and the int. at 6 per cent., which you say was added?

Ans. There was not.

Q. How was the interest, if any, for the two years said note had to run evidenced or satisfied?

Ans. I think it was counted and embodied in the note as part of the $4,000.

32 Q. Can you state the amount thus added in for the two years, and state the rate of per cent. and from what time it was computed?

Ans. I cannot state the amount, but I can state the rate I got; it was 6 per cent., and on some of the claims the interest was computed for two or three years, or probably longer, and included in the $4,000.00. It was computed from the time I got the claims.

Q. After the note was made up and executed with the mortgage, from whom did you receive any payments on account of either principal or interest on said notes?

Ans. I received the interest at 6 per cent. from David Bell. He is a brother of Peter Bell's. I received the interest for one year.

Q. What amount of money or other payment did you receive from David Bell on account of that note?

Ans. He paid me $240 April the 4th, 1869.

Q. From whom else did you receive any interest as principal, and what amount, and when was it paid?

Ans. I received from Hubbard Colby as interest $240.00 April 4th, 1870. He made the payment of interest for the year 1870 some days after the credit was put on the note, but it was credited as of that date. It was about one month after the credit was made on the note. He did not know, but what he would want the interest on the principal for two or three months, and he agreed to pay me 10 per cent. for it. He at no time paid me 10 per cent. on the principal of the note. Hubbard Colby also paid me the next on the note. It was paid soon after April 4th, 1871, the time it was credited on the note; amount was $240. The first payment was paid in cash; the 2d by his check on the Farm-

33 ers' Nat. Bank; it was paid about 2 weeks after April 4th, 1871. I got no interest on the interest on this payment. He paid me the next about two months after April the 4th, 1872. It was credited April 4th, 1872. Amount was $240. He paid me interest at the rate of 10 per cent. on this $240, for those two months. He, Hubbard Colby, paid me the interest for year from 1872 to 1873, in about five months after the April installment, because that the credit was made May, 1873. He paid me interest on the $240 credited of and April 4th, 1873, at the rate of 10 per cent. for about five months. This was paid in money. I have received nothing since this last payment on account of the note or anything that went into it. I have stated all that I ever received on account of the note or of the claims that went into it.

JAMES DICKSON.

Subscribed and sworn to before me this 25th day of June, 1875.

STEPHEN B. PRIEST,
Special Examiner.

Testimony taken in the case now pending in the district court of the United States, within and for the northern district of Ohio, wherein Stephen B. Sturges, assignee of the estate of Hubbard Colby, a bankrupt, is complainant, and Melissa A. Barbour is defendant, before the undersigned, a special examiner in and for said district, in pursuance of a notice hereto attached. Present: L. B. Matron, solicitor for complainant, and A. K. Dunn, for defendant.

Testimony of Abraham C. Cummins.

ABRAHAM C. CUMMINS, of the city of Mansfield, in said district, of lawful age, being first by me duly sworn, deposes as follows:

1. Question by solicitor for complainant. Where do you reside and how long have you resided there?

Ans. I reside in Mansfield, and have resided here for about sixteen years.

Ques. Are acquainted with Hubbard Colby and Mrs. Melissa Barbour; and, if so, how long have you known them?

34 Ans. I am acquainted with both of them, and have known Hubbard Colby for 16 years and Mrs. Barbour for ten years. I might have met her before that time.

Ques. If any relationship exist between you and Mrs. Barbour please state what it is.

Ans. My wife is a niece of Mrs. Barbour, and Mrs. Barbour is a sister-in-law of Mr. Colby's.

Ques. State whether or not your family is intimately acquainted with that of Mrs. Barbour, and whether they associate together.

Ans. They are intimately acquainted and associate together.

Ques. Did you have any conversation with the defendant, Melissa Barbour, at any time during the period of six months prior to October 1st, 1873, in relation to her claim against Hubbard Colby or concerning any money or property in his hands belonging to the estate of her deceased husband? If so, state about the date of the conversation.

Ans. I had no particular conversation. I have heard her claim that a large portion of her money was in bonds in the possession of Mr. Colby. Perhaps I should have stated that Mr. Colby stated to her that this money was in bonds. I could not say whether I heard her say this during the time mentioned in the question or not.

Ques. Did you learn of the fact of her receiving of Mr. Colby a mortgage during the fall of 1873?

Ans. The first that I knew that such mortgages were in existence, I saw them on the record in the recorder's office some time during the fall.

Ques. Where did the conversation referred to take place, and

35 who was present?

Ans. At Mrs. Barbour's house; and I think my wife was present.

Ques. State what called out this remark from Mrs. Barbour, and what was said by each party on the occasion.

Ans. The one time that I can particularly remember was in regard to the question of taxes.

Ques. State whether or not, at any time, you and Mrs. Cummins instituted proceedings in the probate court of Richland County, Ohio, to require Hubbard Colby, as administrator of the estate of Justus L. Barbour, to give additional security and release the estate of Andrew Newman, deceased, as bail.

Ans. We commenced proceedings in the probate court of Richland

County for the purpose of releasing the estate of Andrew S. Newman from any liability on the bond of Hubbard Colby, as administrator of J. S. Barbour, deceased. I might add here, as it was the case, that Andrew S. Newman, during his lifetime, was one of the bondsman for Melissa A. Barbour, as guardian of the estate of Maggie Barbour, May Barbour, and Justus S. Barbour, minor children of Justus S. Barbour, deceased.

Ques. State about when you instituted said proceedings, and why.

(Objected to by solicitor for defendant.)

Ans. I think it was in May or June, 1873. I was managing the estate of Mr. Newman, and under the law I felt as though the estate ought to be released, and that I was particularly careful that no liability be attached to the estate.

Q. Did you not state at the time that Mr Colby was borrowing large sums of money and investing it in unproductive property, and that you did not regard the Newman estate safe under the circumstances?

(Objected to by solicitor for defendant as being leading.)

36 Ans. I may have stated that Mr. Colby was a borrower largely engaged in manufacturing, which was attended with more or less risk, and under these circumstances I wished the Newman estate released from any liability.

Ques. Did you not have a conversation with Mrs. Barbour on or prior to October 1st, 1873, concerning Mr. Colby's responsibility?

(Objected to by solicitor for defendant as leading.)

Ans. I never transacted any business for Mrs. Barbour up to that time that I can now remember of, and was not consulted by her in regard to her business, and don't think I ever gave an opinion in her presence as to any risk or danger of her husband's estate in the hands of Mr. Colby.

Ques. Did you ever hear Mrs. Barbour say anything about or concerning her husband's estate in the hands of Mr. Colby, other than that about the bonds which you have stated? If so, state fully what she said.

Ans. I have heard her express herself as if she had no doubt as to the manner in which her estate was invested, and claimed that the portion which was not in bonds she was getting ten per cent. interest for, I think.

Ques. Have you ever heard Mrs. Barbour, in conversation with yourself or anyone else, say anything about the responsibility of Mr. Colby, or anything on that subject? If so, what?

Ans. At one time I heard her say that some one had asked her if she was not afraid to have her husband's entire estate in the hands

37 of Mr. Colby, and her reply was that she felt that the estate was perfectly safe in his hands; this was not addressed to me, but was a conversation had with her by another person in my presence. There may have been other conversations, but this is the only one I can remember of at present.

Ques. When and where was this conversation had, and who was present?

Ans. It was at Mrs. Barbour's house, and I think my wife was present and wholly in the conversation with Mrs. Barbour.

Ques. Who did Mrs. Barbour say had asked her that question?

Ans. I cannot state positively who that was.

Ques. Give it as your best recollection or impression as to whom the person was.

Ans. My impression is that it was Mrs. George Lusser, but in this I may be mistaken.

Ques. Were you not led to your movement in the probate court in

part on account of the reports that Mr. Colby had become largely involved on account of the M. C. and L. M. Railroad, and by reports as to his difficulties with the Farmers' National Bank, and was not these matters talked over in your family and among the relatives at and about the time of commencing the proceedings in the probate court?

(Objected to by solicitor for defendant as leading.)

Ans. Well, all these things taken together exerted some influince on my mind, but my wife insisted upon having her father's estate released from any liability on the Colby bond shortly after the death of her father. My wife and I talked over these matters, and I talked over the matter of Henry Hidger, who is a cousin of my wife, about the time the motion was filed, and his law partner, George Clugston, filed the motion.

38 Ques. Were not your family and that of Mrs. Barbour at that time and subsequently in the habit of visiting and calling upon each other almost daily and upon the most intimate terms?

Ans. My family and Mrs. Barbour's have always been on intimate terms and made frequent calls on each other.

Ques. Was it not generally reported in Mansfield and the subject matter of general talk about the time of the instituting of the proceedings you have named in the probate court, that Mr. Colby had been compelled to resign his cashiership of the Farmers' National Bank on account of his having used and misappropriated the funds thereof, and was not that matter talked over in your family at the time Mrs. Barbour was calling on and visiting your family and your family calling on them?

(Objected to by solicitor for defendant as leading.)

Ans. I can't say how general the report was in Mansfield. Being a member of the family myself I may have heard less of it than most of people; nor can I remember now of ever talking over the reasons of Mr. Colby's resignation as cashier of the Far. Nat. B'k in the presence of Mrs. Barbour.

Ques. What reason did your wife give for wanting her father's estate released from the liability on Mr. Colby's bond the time you say that she insisted upon it?

(Objected to by solicitor for defendant.)

Ans. Her father and she had discussed it during his lifetime and gave her to understand that there was more or less risk on said bond. I believe*d* that is the only reason that I can remember now that my wife used; she may have urged other reasons, but I cannot remember them now.

39 Ques. What were the general reports in the city of Mansfield after the failure of the First National Bank and Williard L. Hickox as to Mr. Colby being involved with Mr. Hickox and liable on his paper and the effect of Hickox's failure upon him, Colby, and as to his, Colby's, liability to Farmers' Bank, and on account of the M. C. and L. M. Railroad, and as to his solvency?

(Objected to by solicitor for defendant.)

Ans. We, I think, after it became generally known after the failure of First Nat. Bank of Mr. Hickox and that he indorsed largely for Hickox and the M. C. and L. M. Railroad and the amount of his indebtedness to the Farmers' Nat. Bank, he was generally considered insolvent, so far as my knowledge goes.

Ques. Was it not generally said immediately after the failure of the First National Bank and Mr. Hickox was reported that Colby was broken up?

(Objected to by solicitor for defendant.)

Ans. I cannot say that it was until the amount of his indebtedness was generally known.

Ques. State whether or not the fact of his being involved with Hickox and his being indebted to the Farmers' Bank, to Allen Beverstock and others, was not talked over generally shortly after the failure of the First Nat. Bank and Hickox.

(Objected to by solicitor for defendant.)

Ans. The first I knew of his indebtedness to Allen Beverstock was in seeing the mortgages on record at the recorder's office, or perhaps I was told by the recorder the day it was left for record, and I think after that time it was generally talked over.

Q. Was there not considerable talk generally after failure of 1st Nat. B'k and Hickox on the day subsequent to the failure and on the days thereafter, and was not its effect upon Mr. Colby generally spoken
40 of in connection with the failure?

(Objected to by solicitor for defendants.)

Ans. There was considerable talk and excitement for days after the failure, and Mr. Colby's name was mentioned in connection with it when it became generally reported that he was on a large amount of Mr. Hickox's paper.

Ques. Was it generally known in Mansfield prior to Hickox' failure for some months and years that Mr. Colby and Mr. Hickox were large borrowers of money and were in the habit of indorsing and bailing for each other?

(Objected to by solicitor for defendant.)

Ans. It was perhaps generally known that they were borrowers. I can't say that it was generally known that they indorsed each other's paper.

Ques. Was it not a fact that their social and business relations were very intimate, and was this fact not generally known for months and years previous to Hickox' failure?

(Objected to by solicitor for def. as leading.)

Ans. It was.

Ques. Do you know whether Mrs. Barbour had any personal knowledge of the execution of the mortgage until after it was recorded?

Ans. I knew nothing of the execution of these mortgages nor did I know anything about the existence of the mortgages until I saw them on record in the recorder's office.

Ques. How near to where the Farmers' Nat. Bank is located, of which Mr. Colby was cashier, is the residence of Mrs. Barbour, and how long has she resided there?

41 Ans. It is within 240 feet on the same street and in the same block; she has been living there since 1866.

Ques. Did not Mr. Colby pass her residence in going to and from his home?

Ans. He would, in going to and returning from the bank, or in coming from his home and going to any general business part of the town.

Ques. What relatives, if any, had Mrs. Barbour associated with Mr. Colby in the Farmers' Bank, as employees of , until the 1st of October, 1873?

Ans. She had a brother that had been there for a number of years, and a nephew by marriage, who was there for some three years, and perhaps longer.

Cross-examination by solicitor for Mrs. Barbour:

Ques. When did the sister of Mrs. Barbour, who was the wife of Mr. Colby, die?

Ans. I believe it was in August, 1865.

Ques. What was the date of Hickox' failure?

Ans. It was the 26th day of September, 1873.

Ques. How long after his failure until it was generally known that Mr. Colby was largely involved with him as security on his paper?

Ans. I can't specify the number of days, but it was a very short time after the failure of the bank; it might have been a week or ten days; it might have been longer or not as long.

Ques. Was there any talk, generally, about Mr. Colby's indebtedness to Allen Beverstock before you saw the mortgage of Mr. Colby to Mr. Beverstock on record?

Ans. I had not heard of any.

Ques. Was not Mr. Newman peculiarly careful about going on bonds of administrators, and after he had done so, being uneasy about the results?

Ans. He was particularly careful about going on bonds. I
42 never knew of his going on any but this one. He may have gone on others.

Ques. How was he in that respect with regard to other obligations that he signed as security?

Ans. I don't know that I can answer it any better than to say that he was peculiarly careful about becoming liable, and frequently speak of that matter afterwards.

Ques. When did Mr. Newman die?

Ans. On the last day of January, 1872.

Ques. Were letters of administration taken out on his estate?

Ans. No, sir.

Ques. Who was the heir of the estate?

Ans. My wife was the heir of the estate.

Re-examination by solicitor for comp.:

Ques. Have you now stated all that you know in regard to Mrs. Barbour's knowledge or information or belief as to the financial condition of Mr. Hubbard Colby at the time of the execution of the mortgage in controversy, October 1, 1873? If not, state fully all that you may know concerning this matter.

Ans. I had never had any conversation with Mrs. Barbour about the mortgages until long after their execution, and cannot now distinctly remember of anything that I have not stated that might influence her mind at the time these mortgages were executed. There may have been other conversations between myself and Mrs. Barbour, or in my presence, but if so I cannot now remember them, running back for a period of years.

A. C. CUMMINS.

Testimony of Jacob Hade.

Also, JACOB HADE, of the city of Mansfield, Ohio, in said district, being by me first duly sworn, deposes and under his oath says as
43 follows:

1. Question by solicitor for complainant. Are you acquainted with Hubbard Colby and Melissa A. Barbour; and, if so, how long have you known them, and what relation are you to them?

Ans. I am acquainted with them. I have known Mr. Colby about eleven years, and Mrs. Barbour seven or eight. Mr. Colby is my father-in-law, and Mrs. Barbour an aunt of mine by marriage.

Ques. Where were you engaged in business on the 1st day of October, 1873, and for a year prior thereto?

Ans. I was in the employ of the Farmers' National Bank.

Ques. When did Mr. Hubbard Colby cease to act as cashier of said bank?

Ans. I can't give you the year. In April, 1871, or 1872.

Ques. State fully the cause of his ceasing to act as said cashier.

Ans. A change was made by order of the Comptrol'er of the Currency.

Ques. State about how much Mr. Colby was indebted to the said bank at that time, either as principal debtor or surety or indorser.

Ans. About fifteen thousand dollars.

Ques. Does that include all of his indebtedness to the bank, including that evidenced by obligations and bank accounts?

Ans. It does.

Ques. State whether or not Mrs. Barbour was in the habit of calling at the bank occasionally where Mr. Colby done business, and talking over business matters with Mr. Colby.

Ans. She called there frequently and talked with Mr. Colby at his desk; what her business was I don't know.

Ques. Was Mr. Colby's financial condition talked over in the bank and among the friends at that time?

Ans. Not that I know of.

Ques. Was not the fact that Mr. Colby being removed from
44 the cashiership of that bank by order of the Comptrol'er of Currency, and the amount of his indebtedness to the bank at the time of his leaving the same known among the relatives and friends and talked over among them?

Ans. Not that I know of. I will put some more to that. It may have been and I not know it, as I am not in the habit of talking business except when it is necessary. I have learned since that it was talked over at that time.

Ques. You say in your last answer that you have learned since that it was talked over at that time. Please state fully and accurately all that you have since learned on that subject, and from whom.

(Objected to by solicitor for defendant.)

Ans. I was present this morning during a part of Mr. Cummins' examination, and if I am not mistaken, he stated that he and his wife had talked it over together.

Ques. Is that the only source of information you have had on the subject?

Ans. The only source I can think of at present.

Ques. Did you ever hear Mrs. Barbour, at any time or place, say anything about her husband's estate in the hands of Mr. Colby?

Ans. I have since the failure.

Ques. Did you ever hear her say anything to Mr. Colby or any one else about security upon her claim?

Ans. To nobody except to myself.

Ques. When was that?

Ans. Some time last spring; I could not give the date within two months.

Ques. What brought about a conversation with you on that subject at that time?

45 Ans. I do not know what her motive was, but my supposition was that it was her anxiety to realize upon her security.

Ques. How was Mr. Colby's indebtedness to the bank adjusted?

Ans. His indebtedness as principal was liquidated by cash. His indebtedness *or* surety or indorser still exists.

Ques. How was the cash obtained?

Ans. I was not present when it was obtained.

Ques. What knowledge have you on the subject?

Ans. If I had any at the time I have forgotten it.

Ques. Mr. Colby subsequently became indebted to the bank; if so, when and to what amount, prior to your leaving?

Ans. He became indebted to the bank subsequently, but I cannot give you the time or amount.

Ques. State as nearly as you can at what time and to what amount.

Ans. Ten thousand dollars, I think, some time in December, 1872—I am not positive; and ten thousand dollars some time in July or August, 1873.

Ques. How did the first indebtedness of which you speak first originate, to wit, the indebtedness existing at the time of his removal?

Ans. I do not know.

Ques. State how it was evidenced as indebtedness to the bank.

Ans. By his signature to a cognovit.

Ques. What proportion of that was he indebted as principal debtor and on the balance who was he surety for?

Ans. About two thirds of it, and he was surety on my notes.

Ques. How did the second indebtedness mentioned, of Dec., 1872, originate, and how was it evidenced?

Ans. It was borrowed money and evidenced same as the former indebtedness.

Ques. How did the last indebtedness which you have named originate, and how was it evidenced?

46 Ans. It was borrowed money, and evidenced by a bill of exchange. I don't know whether he drew it or H. H. Colby drew it. It was drawn by one or the other and it was accepted.

Ques. State the names of the payees named in each one of these notes and bills evidencing these several amounts of indebtedness.

Ans. I won't be sure without the papers, but I think it was either the Farmers' National Bank or myself, or cashier.

Ques. Did the books of the bank show these several amounts of indebtedness?

Ans. The one was registered as a bill and the other was not.

Ques. When did these several obligations mature?

Ans. I did not know when the one matured; other matured in October, 1873.

Ques. What was the gross amount of Hubbard Colby's indebtedness to the Farmers' Nat. Bank, October 1st, 1873?

Ans. Thirty thousand dollars.

Ques. Immediately following the failure of First Nat. B'k and Williard S. Hickox, 26th of September, 1873, was it not generally reported and talked that on account of Mr. Colby's liability on the paper of Mr. Hickox and his intimate business relation with him and his liability on account of the M. C. and L. M. Railroad with Mr. Hickox and others and his liability to Beverstock and others that he would fail?

(Objected to by solicitor for defendant.)

Ans. What the report was immediately after the failure of the First National *was* I cannot say. I was called into the First National Bank by the directors on Monday after its failure and spent most of my time there.

47 Cross-examination:

1st question by solicitor for defendant. What was Hubbard Colby's indebtedness to the Farmers' Nat. Bank on the 1st day of October, 1873, as principal?

Ans. It is either ten or twenty thousand dollars. I don't know which was principal in the bill of exchange of ten thousand dollars.

Ques. Was not the amount of paper on which Colby was surety for Hickox unknown to the public for some time after Hickox's failure?

Ans. I know I was ignorant of it at any rate, and I should have thought that the public would have been.

Ques. How long after?

Ans. I don't believe that any one knew the amount until Hickox went to making up his schedules.

Ques. How long was that after until he made up his schedules?

Ans. It was a month after, at least.

Ques. Was not the reports of Colby's contemplated insolvency based on his being surety for Hickox?

Ans. So far as I know it was.

Ques. What means had you of knowing the amount of paper Colby was on for Hickox?

Ans. I had not any only what I gained as receiver of 1st Nat. Bank. I could not have given you a dollar of it outside of that. I don't know it yet.

Ques. What relation did Hickox sustain to the First Nat. B'k?

Ans. He was president of the First Nat. Bank.

Ques. When did you take charge of the bank as receiver?

Ans. I took possession the 28th of October, 1873, as receiver. I took charge of the bank under a resolution of the board of directors to wind up or go into voluntary liquidation a few days after suspension—about a week.

48 Ques. The information you acquired on first going into the bank in regard to the liability of Hickox and Colby were you at liberty to disclose?

Ans. At that time I was not; at least I did not consider myself so.

Re-examination:

1st ques. Who received the money on the paper that you say you do not know who was principal and who was surety?

Ans. Hubbard Colby.

JACOB HADE.

Testimony of Lester Armentrout.

LESTER ARMENTROUT, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. What relation are you to the defendant, Melissa A. Barbour?

Ans. I am her brother.

Ques. Were you in the employ of the Farmers' National Bank of Mansfield, and if so, during what period of time?

Ans. From the 14th day of July, 1856, to the 2d of March, 1874.

Ques. Did you at any time have conversation with your sister, Mrs. Barbour, concerning her husband's estate under the control of Mr. Colby?

Ans. I have on several occasions. I don't recollect the times or how many.

Ques. As near as you can remember when was the first conversation?

Ans. I don't recollect exactly. The conversation was generally brought up by her. She said this one and that one was talking to her and wanting to know what security she had. I told her if she was not satisfied she had a right to get another administrator. That is about all the conversation I can recollect of. This conversation must
49 have been from one to two years previous to the suspension of First Nat. B'k.

Ques. Did you have a conversation with Mrs. Barbour, concerning her husband's estate, within a few days after the First National Bank and Mr. Hickox' failure?

Ans. Not that I recollect of at present.

Ques. Did you hear Mrs. Barbour say anything about her husband's estate or the condition thereof after the failure of the First Nat. Bank?

Ans. Not that I recollect of.

Ques. Who did Mrs. Barbour say had been making inquiries of her, as you have stated, and had been talking to her about security?

Ans. As near as I can recollect, I think it was Judge Keith. I mean by Judge Keith, the probate judge of this county.

Ques. Who else?

Ans. I do not recollect the other parties at present if she told me at the time.

Ques. What did she say that Judge Keith had told her?

Ans. I do not recollect, but I think he told her she ought to have additional security.

Ques. Had you knowledge of Colby's indebtedness to the Farmers' National Bank during your employment in said bank?

Ans. I had.

Ques. State whether or not at any time you had any conversation with Mrs. Barbour about Mr. Colby's said indebtedness?

Ans. I don't think I did.

Ques. Did you ever hear her say anything to any one on that subject or any one to her?

Ans. Not that I remember of.

Ques. Did you have any conversation with her on the subject
50 of Mr. Colby's leaving the employment of the bank, or his reasons for so doing, or the cause thereof?

Ans. I may have, but I don't recollect.

Ques. Was not that the family and relationship talk at the time and for some time subsequent to its occurrence?

Ans. I don't remember; I suppose there was some talk, but I don't know it, as I never paid much attention to it.

Ques. Did you know the cause of Mr. Colby leaving the bank?

Ans. I believe he resigned on account of his being to' closely confined to business.

Cross-examination by solicitor for Mrs. Barbour:

Ques. Do you remember the time Mr. Colby ceased to be cashier of the Farmers' National Bank?

Ans. It was the 1st of April, 1872.

Ques. Was he at that time also a director of the bank?

Ans. He was.

Ques. Did he resign the cashiership?

Ans. He did.

Ques. When was the first election of directors of the bank after his resignation of the cashiership of the bank?

Ans. I do not recollect the day of the month, but it was either the second or third Tuesday in January, 1873.

Ques. Was Mr. Colby re-elected a member of the board of directors at that time?

Ans. He was.

Ques. Did he continue a member of the board until November or December, 1873?

Ans. He did.

Re-examination by solicitor for complainant:

Ques. Do you not know that the cause of Mr. Colby's resigna-
51 tion of the cashiership of the Farmers' National Bank was not that which you have stated, to wit, to be relieved from confinement?

Ans. Not from my own knowledge.

Ques. What information have you on the subject?

Ans. Nothing only what I have heard from Mr. Purdy.

Ques. Was not the cause of his resignation talked over by employees and others in the bank, and was it not a subject of general talk at that time or shortly thereafter?

Ans. I don't think it was talked over much by the employees of the bank, as there was only two of us there, outside of the bank; questions were frequently asked me the reason of his resigning. I think the cause of his resigning was talked over in the bank by others, but I was busy at my books and did not give it that attention that I might have done.

Ques. What were your answers to these frequent inquiries as to the cause of Colby's resignation?

Ans. I do not recollect now, but the answer I gave then, whatever it may have been, depended a great deal upon the humor I was in at the time, as I considered that outsiders had no business to know of the affairs of the bank

Ques. How far was your books and desk from where these conversations were had by others in the bank and was it in the same room?

Ans. It was within a very few feet.

Ques. How many rooms were occupied by the Farmers' National Bank for its business, while you were in there, at the time of the resignation of Mr. Colby and for some time subsequent thereto?

Ans. There was one room.

Ques. Did not Mrs. Barbour inquire of you why Mr. Colby had ceased connection with the Farmers' National Bank?

52 Ans. She may have done so, but I have not the least recollection of it.

L. A. ARMENTROUT.

Testimony of Mary Cummins.

Mrs. MARY CUMMINS, of Mansfield, O., in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. Are you acquainted with Hubbard Colby and Melissa Barbour, and how long have you known them, and what relation are you to them?

Ans. I am; I have known them all my life; Mrs. Barbour is an aunt and Mr. Colby is an uncle of mine.

Ques. Is it not a fact that you and your family and Mrs. Barbour and

her family for several years last past been on very intimate terms of friendship, and continuously in the habit of calling upon each other?

Ans. Mrs. Barbour and her family are on intimate terms with me and my family, and we have been in the habit of continuously calling upon each other.

MARY N. CUMMINS.

Testimony of Mrs. John Luper.

Also, Mrs. JOHN LUPER, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. Are you acquainted with Mrs. Melissa Barbour, and how long have you known her?

Ans. I am acquainted with her, and have known her intimately for six years.

Ques. How near to Mrs. Barbour do you now live, and how long have you lived there?

53 Ans. I live right across the street from her and have lived there three years.

Ques. Did you, at any time, have a conversation with Mrs. Barbour about or concerning the condition of her husband's estate in the hands of Mr. Colby, or anything on that subject?

Ans. At one time we did have a conversation about her affairs.

Ques. Please state fully what that conversation was, giving what each said as near as you can recollect.

Ans. I asked her if she was not afraid to trust all of her business in the hands of Mr. Colby. She said she was not; that the little she had would be nothing to him, that he was worth so much more. I suppose that it was not pleasant for her to talk about this matter, and I refrained from mentioning the matter on that account.

Ques. Did you have any conversation with Mrs. Barbour after the failure of the First Nat. Bank?

Ans. Yes, sir; I did. I asked her if she was frightened. She said she knew where her money was. This occurred on the evening of the day of the failure.

Ques. Was there anything said in the last conversation as to the effects of the failure of the First Nat. Bank and Hickox upon others?

(Objected to by solicitor for defendant as leading.)

Ans. I believe not.

Cross-examination:

Ques. Was it the news of the failure of the First Nat. Bank that occasioned the conversation last mentioned between you and Mrs. Barbour?

Ans. Yes, sir.

Ques. Have you given all that was said between Mrs. Barbour and you on both of those occasions?

Ans. I think I have.

54 Ques. At the time of the failure of the First Nat. Bank, when speaking with Mrs. Barbour, was it regarded as a fact that the bank had failed or only as a joke?

Ans. I thought it had only suspended and would be open in the morning. I don't know what Mrs. Barbour thought; she started right home; she may have had fears, but she said nothing.

ANN LE SUP.

Testimony of Eckler McCoy.

Also, ECKLER MCCOY, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes and says as follows:

1st question by solicitor for complainant. How long have you resided in the city of Mansfield, and how long have you known Hubbard Colby?

Ans. I have resided in Mansfield about 30 years, and have known Mr. Colby between 25 and 30 years.

Ques. Do you remember the occasion of the failure of the First National Bank and Williard S. Hickox in the fall of 1873?

Ans. Yes, sir; I do.

Ques. What was your occupation at that time?

Ans. I was superintendent of the city water works.

Ques. State whether or not there was any reports in circulation in the city of Mansfield as to the effect of the failure of the First National Bank and Mr. Hickox or Mr. Hubbard Colby. If so, state how general these reports were, the purport or nature of them, and how soon put in circulation after the said failure?

Ans. Well, it was about the time or immediately after the fail-
55 ure of the bank that there was a general report in circulation that it would carry down with it Mr. Colby and others. The reason why, as I understood, was that Mr. Colby was a heavy indorser for Mr. Hickox for the said road and in other matters. That was about what I heard and what was talked over by men as they met in crowds during those exciting times.

Ques. State whether or not said reports as to the effect of the failure of Hickox and the bank were a subject of general conversation and discussion immediately after the failure.

Ans. Yes, sir; and continues yet.

Cross-examination by solicitor for Mrs. Barbour:

1st question by solicitor for defendant. When did you first hear that Colby was an indorser for Hickox?

Ans. I could not say when the first date was. Have heard it frequently since the failure as a general conversation.

Ques. State as near as you can when you first heard it.

Ans. Prior to the failure of that bank I heard it a number of times that he was Hickox's general indorser.

Ques. Will you state the first time you heard it, as near as you can.

Ans. I cannot give the exact date.

Ques. Did you hear any more about it after the failure of the First Nat. B'k than you heard before?

Ans, O, yes, sir; it was alluded to in almost all the conversations on that subject.

Ques. What more did you hear about it after the failure than you did before?

Ans. My understanding was that the failure of Mr. Hickox and that bank would cause the failure of Mr. Colby.

56 Ques. You say that you heard before the failure that Mr. Colby was the general indorser for Hickox; from whom did you hear that?

Ans. I could not give the names. I don't remember the persons particularly that were talking about it.

Ques. Can you give the names of any one?

Ans. I don't think I will venture to give the name of any one.

Ques. Can you state the amount for which he had indorsed that you had learned of prior to the failure?

Ans. I never heard any definite amount stated prior to the failure.

Ques. Can you state what amount you learned after the failure that he had indorsed for?

Ans. My impression is that he had indorsed in the railroad matter to the extent of thirty or forty thousand dollars; I also understood that he was a large indorser for Hickox in personal matters, the exact amount I cannot give.

Ques. When did you learn the amount of his indorsement in the railroad claim?

Ans. After the failure of the bank; exactly when I could not say; it was after that occurrence.

Ques. Was it a month after?

Ans. From the time of the failure up to the present time I have always understood that to be the fact. The failure of the bank particularly brought it into general conversation.

Ques. Will you now please state the time when you heard first after the failure of the bank of Colby's indorsement on railroad paper for Hickox if you can, and if you cannot, state as near as you can the first time you heard of it.

57 Ans. I cannot answer that question better than I did before as to date. It was since that occurrence.

Ques. Was it a month after the occurrence?

Ans. I could not say; but whenever that subject was up in conversation it was invariably alluded to.

Ques. Was it more than a month?

Ans. I could not say whether it was immediately or a month. I have no doubt but what it was all along in those times.

Ques. Have you any different statement as to the time you heard these conversations in regard to the personal indorsements than you have made in regard to the railroad paper?

Ans. No, sir.

Ques. Of whom did you hear the statements that you have made?

Ans. I could not give the names of any person particularly.

Ques. Where was your place of business for a month or two months after the failure of the First Nat. Bank?

Ans. The water-works have an office in the Opera Building, where I make it my headquarters; but my business is all over the city, wherever it calls me.

Re-examination by solicitor for complainant:

Ques. Supposing the First Nat. Bank and Hickox to have failed on Friday, 26th of September, 1873, when would you say, if at all, that it was generally reported and talked that the failure of the said bank and Hickox would carry down Mr. Colby and others with them?

(Objected to by solicitor for defendant.)

Ans. From the time of the failure on to the present whenever I heard the failure alluded to.

Recross-examination by solicitor for Mrs. Barbour:

1st. Ques. What enables you now to state that you heard such reports on the 26th of September, 1873?

58 Ans. I don't understand that I have said so; supposing the bank to have failed on that day, it was whenever alluded to since.

Ques. Do I understand you, then, that you do not intend to change by your answer to the first question on re-examination what you said on

cross-examination in regard to the time when you heard the report you mentioned?

Ans. I know of no change that I could make.

Second re-examination:

1st. Ques. Was it not a fact that the subject of Mr. Colby's failing was generally talked of as a result of the failure First Nat. B'k and Hickox from the time the general reports of said failure were put in circulation?

(Objected to by solicitor for def' as leading.)

Ans. Yes, sir.

Second cross-examination:

Ques. Do you still adhere to the answer you made on cross-examination as to the time of these reports?

Ans. Yes, sir.

E. McCOY.

Testimony of B. B. McVay.

Also, B. B. McVAY, of the city of Mansfield, Ohio, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. How long have you resided in the city of Mansfield, and for the last five years what has been your occupation?

Ans. I have resided in Mansfield for nine years, and have been engaged in the lumber business here in Mansfield for the last five years.

59 Ques. Do you recollect the date of the failure of the First Nat. Bank of Mansfield?

Ans. I do. It failed on Friday, the 26th of September, 1873.

Ques. What was the general effect upon the community of the failure of that bank, Hickox, and R. H. McMann, as to creating an excitement and being a subject-matter of general talk, if anything?

Ans. It created an excitement, and was the general subject of conversation.

Ques. What relation did you sustain to the bank prior to and at its failure, either as officer, creditor, or otherwise?

Ans. The firm of McVay, Allison and Co., of which I was a member, was a debtor of the bank's. Mr. McMann and Mr. Hickox had our notes for nine thousand dollars on accommodation paper, and we held as collateral stocks of the bank.

Ques. State whether or not there was a meeting held by those interested in the bank; if so, how soon after the report of the failure, and where, and as near as you can state who was present?

Ans. There was a meeting held at the residence of Robert McMan, the cashier, on Friday evening, the day of the failure of the bank, and there were present at that meeting Willard L. Hickox, R. H. McMann, J. H. Cook, J. H. Reed, H. C. Hedges, and myself.

Ques. Was there anything said on that occasion as to Mr. Colby's liability on account of and with Mr. Hickox? If so, state as near as you can what was said.

Ans. Mr. McMann said that Mr. Hickox's failure wou'd result in the failure of Mr. Colby, or words to that effect.

60 Ques. Was there anything else said on that subject by any one; and, if so, what?

Ans. Not that I recollect of at that time.

Ques. When, if at all, was the next meeting of those interested in the bank held, and where, and who was present?

Ans. The next meeting of those interested in the bank was held at the residence of Mr. Hickox, on Saturday, the next day after the failure of the bank. There were present the same persons as before mentioned, George A. Clegston, and a part of the time M. R. Dickey.

Ques. Was there anything said on that occasion by any one as to the effect of failure of the First Nat. B'k & Hickox upon Mr. Colby; if so, what?

Ans. Mr. Hickox said that in connection with his failure it would ruin Mr. Colby. He said, "poor Colby, it is too bad," with a great deal of emotion.

Ques. When, if at all, was the next meeting, and where?

Ans. The next meeting was held on Monday, the 29th of September, 1873, in the office of the bank.

Ques. At what time of day, and who was present?

Ans. It was in the forenoon, and there were present H. C. Hedges, J. H. Cook, J. H. Reed, and Hon. John Sherman, and former teller of the bank, John B. Renyan, a part of the time, and myself.

Ques. Was there anything said on that occasion about Mr. Colby's debts and liabilities and the effect of the failure of Hickox, McMan, and the bank upon Mr. Colby? If so, state fully.

Ans. Yes. We had the bills receivable of the bank before us at that meeting; and also had a private memorandum book upon which
61 Mr. McMan kept his bills rediscounted. It is my recollection that Mr. Colby was indorser or principal on bills receivable and bills rediscounted by the bank for a sum not less than forty thousand dollars. It was a subject conversation that the failure of the bank and Hickox would result in the ruin of Mr. Colby.

Ques. Can you give the language used by the parties on that occasion more definitely than you have?

Ans. I recollect of Mr. Hedges saying, it will ruin Mr. Colby; that is the substance; I cannot give the exact words.

Ques. Was anything said on that occasion by any person present on the subject of Mr. Colby being at fault, as well as Mr. Hickox, for the failure? If so, state what was said.

Ans. I remember that the remark was made that financially Mr. Colby was about as Mr. Hickox; the words were, "that financially he was a shell."

Ques. Were there not numerous meetings of those interested in the bank, right along after the failure of the bank, from day to day?

(Objected to by solicitor for defendant as being leading.)

Ans. There were a number of meetings of the persons I have named.

Ques. Was Mr. Jacob Hade, son-in-law of Mr. Colby, at any time called into the bank to examine the condition of the book accounts, &c., of the bank? If so, state about when he was first called in.

Ans. He was called on and assisted in examining the papers and letters the fore part of the week following the failure of the bank; I think it was on Monday; I am not positive; I would say as early as Tuesday, at least.

Ques. Do you know where Mr. Hade and Mrs. Barbour then resided?

62 Ans. They were both residents of Mansfield. They were both residing on the south part of West Diamond street.

Ques. State whether or not Mr. Hade, in passing from or to his home

to or from either the First Nat. Bank or the Farmers' Nat. Bank, would pass by Mrs. Barbour's residence?

Ans. He would if he went the direct rout'.

Ques. What part did Mr. Hade take in the bank after he was called in as you stated?

Ans. He assisted in examining the bills receivable, for one thing, and he assisted in examining the mails and correspondence, giving the benefit of his knowledge on that subject.

Ques. State whether or not he examined the list of rediscounted paper, the books, &c., and took charge of the same.

Ans. I think he examined the list of rediscounted paper, and just the date when he took charge of the books of the bank I don't remember; it was very shortly after the failure.

Ques. Do you recollect whether Mr. Colby was in the city the day of the failure and for days subsequent thereto or not?

Ans. I don't recollect whether he was in the city on the day of the failure or not, but I do remember that he was in the city in the evening. I saw him on Sunday evening following that.

Ques. Do you know whether Mr. Colby went near the First Nat. Bank, or ever inquired about the condition of the bank after its failure?

63 Ans. I know of his making some inquiries about the banks. I do not recollect of seeing him about the bank.

Ques. State to whom those inquiries were made, what they were, when and what answers or response was given thereto?

Ans. They were made to myself, on the Sunday evening after the failure of the bank, on the porch of H. C. Hedges' residence. I can't recollect the words, but the import of them was as to the condition of the bank and the general condition of affairs rather than anything special or definite. I think that the substance of my reply was that he probably knew as much about it as I did. I did not feel as though I was at liberty then to enter into the detail of things, and that he knew as much about it as I did.

Ques. Did you hear any conversation between him and Mr. Hedges and on the subject of the failure?

Ans. Nothing that I recollect.

Ques. Did you hear anything further as to the effects of the failure upon Mr. Colby other than what you have stated within the next three or four days following?

Ans. Yes, I did.

Ques. State fully what they were, when and by whom stated?

Ans. On Sunday afternoon following the failure, Henry Roland and John Shellenberger were at my house, and Mr. Roland said he understood that Mr. Colby was largely involved with Mr. Hickox, and wanted to know if it was correct, as if I knew anything about it. I gave Mr. Roland, confidentially, the information I had received from the bank as to Mr. Colby's appearing on the paper found, as I have before stated.

Ques. Where did Mr. Roland and Mr. Shellenberger reside at

64 that time, and what were their occupations?

Ans. They resided in Mansfield. Mr. Roland was county treasurer, and Mr. Shellenberger was his clerk.

(The whole foregoing deposition is objected to by solicitor for defendant as incompetent.)

Cross-examination:

Ques. Was the conversation you related as taking place on Sunday with Roland, on the same day as that with Colby, and, if so, before or after it?

Ans. The conversation with Mr. Roland was after that had with Mr. Colby, and both on the same day, one in the afternoon the other in the evening.

Ques. Were the meetings you have mentioned which took place at the house of McMann, Hickox, and the banking house, meetings of the officers and stockholders of he bank, held privately or otherwise?

Ans. They were meetings of the officers simply, and I was called in and requested to act as cashier at the time, and was elected as such by the officers, temporarily; they were rather private meetings, except as to interruptions by persons calling there inquiring about their business in the bank.

Ques. When was the information obtained at these several meetings first made public, if at all?

Ans. The information obtained was never made public by publication, that I remember of.

Ques. Was it agreed in these meetings that the information obtained as to liabilities of parties was to remain with those composing the meeting, or to be made public?

65 Ans. I don't remember of any agreement of that kind, but I think was considered that it would be best to keep it as close as possible and not make it public on the streets in conversation.

Ques. So for as you communicated this information, was it done confidentially to parties interested or talked to persons on the streets miscellaneously?

Ans. It was communicated to persons in confidence.

Re-examination:

Ques. Do you know how extensively the effect of the failure on Colby was talked over in the community after the failure of bank?

Ans. I do not know how extensively it was talked over, but I know it was a matter of conversation.

B. B. McVAY.

Testimony of William Bushnell.

Also, WILLIAM BUSHNELL, of the city of Mansfield, Ohio, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. Where do you reside and what is your occupation?

Ans. I reside in the city of Mansfield, and am a physician and surgeon by occupation.

Ques. How long have you resided in Mansfield, and have you a general acquaintance with the inhabitants thereof?

Ans. I have resided in Mansfield for about fifty years, and my acquaintance with the people is general.

Ques. Are you acquainted with Hubbard Colby, Mrs. Melissa Barbour, and Allen B. Beverstock; and, if so, how long have you known them?

Ans. I have known Mr. Colby, perhaps thirty (30) years, Mrs. Barbour from childhood, Mr. Beverstock, I should at least say forty years.

66 Ques. Do you recollect the date and occasion of the failure of the First Nat. Bank, of Mansfield, and Williard S. Hickox?

Ans. I believe the bank failed about the 26th or 27th of September, 1873, and Hickox on the same day. I remember the occasion.

Ques. State whether or not there was any report in circulation in the

city of Mansfield after the said failure, as to the effect thereof on Mr. H. Colby; if so, state how soon after the said failure, how generally the same were, and the purport or character thereof.

Ans. There was; I think the talk*ed* commenced at the time of the failure, and continued on from day to day; it became a very general subject of conversation between squads of men; the character of the talk was that it would be disastrous to Mr. Colby and the Farmers' Nat. Bank, of which Mr. Colby was an officer. I cannot give the language used, but there was a great deal of different kinds of talk, and, among the others, Mr. Colby was spoken of a great deal.

Ques. State whether or not there was a meeting of the citizens of Mansfield shortly after the failure of First Nat. Bank; if so, were you present, how soon after the failure, and where was it held, and extent of the meeting, and what was the subject-matter under consideration, and how was the meeting called together?

Ans. There was such a meeting; I was present; it was either
67 the same day or the next day, I am not certain which; my opinion is it was next day after the failure; it was held at Miller's Hall; it was quite a large meeting; the subject-matter and consideration was to pass some resolution requesting the depositors in the banks of Mansfield not to make a rush upon the banks to draw out their money, as there was great excitement, and it was feared that there would be a run upon the other banks of Mansfield, as one had already failed, and among other things that came up, there was a request that the bank pay a small per cent. to their depositors.

Ques. State whether or not, on the day of the said meeting, the financial condition of Hubbard Colby and the effects of the failure of the 1st Nat. B'k and Hickox would have upon Mr. Colby was talked over; and, if so, how general.

Ans. It was pretty generally talked over, and also before that meeting was called.

Ques. What was said on that day about that matter, and how general was it?

Ans. It was the general subject of conversation among the citizens on that day that it would effect Mr. Colby and his bank.

Ques. Was there any report on that day, or prior or immediately subsequent thereto, as to the extent or amount of Mr. Colby's liability as surety or indorser for Mr. Hickox and with him on liabilities arising out of the construction of the M. C. and L. M. R. R. and his (Colby's) personal liabilities to Farmers' Nat. Bank and others?

Ans. It was spoken of very frequently after that day, and I think on that day, but I did not hear of it prior to that day. I can't say what amount; I don't think the sum was mentioned, but it was
68 spoken of that he was largely involved with Hickox. As to it being general, it was spoken of very often; it was general.

Ques. State whether or not you attended another meeting of the citizens of Mansfield prior to the one you have named; and, if so, when and where.

Ans. I attended a private meeting, I think it was in the evening preceeding the one spoken of, held at the home of Mr. Jolly, cashier of Richland Nat. Bank.

Ques. About how many were present, and what was the subject-matter under consideration?

Ans. I think there was about a dozen men present; the subject matter was to take into consideration the propriety of calling the public

meeting spoken of and discuss generally the effect the failure of the banks would have upon the people.

Ques. State whether or not the effect of the failure named, and the consequences to Mr. Colby, was talked over or mentioned at that meeting, that you recollect of.

Ans. The effects to the bank was spoken of more than to persons. I don't remember as to whether Mr. Colby's name was mentioned or not.

Ques. What are the reputed characteristics of Mr. Allen B. Bever stock as to general intelligence and business tact and shrewdness?

Ans. I would say he stood very high as to his tact and shrewdness in business and financial operations.

(The whole of the foregoing deposition is objected to by solicitor for defendant as incompetent.)

Cross-examination by solicitor for def't:

69 Ques. State when you first heard the conversation in regard to the failure of the First Nat. Bank and Williard S. Hickox, and how Hubbard Colby would be affected by said failure.

Ans. It was on the day of the failure. It was very soon after the door was closed, I think.

Ques. What time in the day was the bank closed?

Ans. I do not recollect.

Ques. With whom did you have this first conversation?

Ans. I do not think I said I had a conversation, but I said it was a subject of general conversation.

Ques. Who held this first conversation?

Ans. I cannot say.

Ques. Did you yourself have any conversation with any person on the subject?

Ans. As I said before, it was a thing that was talked of very frequently, but I do not say that I had any conversation with any particular person. I presume I had, but I don't remember it.

Ques. Can you name the persons with whom you conversed on that subject, or whom you heard converse on that subject, or any day, including the days of the failure, up to the tenth or twelfth of October, that year?

Ans. I don't think I can name the individuals.

Ques. Was it not the talk that if something was not done to prevent the effects of the financial panic and a run upon the banks, that the effects of these failures would prove disastrous to the banks, and thereby to the public generally, and were not the meetings called to prevent such occurrence?

Ans. It was so to a certain extent. It was not to the public generally, but rather to the individuals, or to both. Business houses also were named which might suffer.

70 Ques. In what way was it said that Colby would be affected?

Ans. It was talked of frequently these days that Colby was a large borrower of money, and that he would be broken up if a run was made on the Farmers' Nat. Bank and others.

Ques. The idea was, was it, that if a run was made upon the Farmers' Nat. Bank, and it failed, he and others would fail with it?

Ans. That is the substance of it.

Ques. That was the substance of the talk during the days I have mentioned, after the failure, was it?

Ans. I said it was when speaking on that subject; a great many other things were spoken of beside that.

Ques. What else was said in regard to Mr. Colby's being effected by the failure?

Ans. I do not think of anything else.

Ques. Is the Farmers' Bank still doing business?

Ans. I believe it is.

Re-examination by solicitor for comp't:

Ques. Do you know what assessment was made upon the stockholders of the Farmers' Bank to enable them to do business?

Ans. Only from rumor. I am not connected with the bank.

WM. BUSHNELL.

Testimony of Columbus S. Dolittle.

Also COLUMBUS S. DOLITTLE, of the city of Mansfield, in said district, of lawful of age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State, if you please, your place of residence and your occupation.

71 Ans. I reside in Mansfield, Ohio, and am a minister of the gospel by profession.

Ques. Are you acquainted with Hubbard Colby and Mrs. Melissa A. Barbour; and it so, how long have you known them?

Ans. I am acquainted with both of them. I have been acquainted with Mr. Colby since 1861, and Mrs. Barbour I am not so well acquainted with. I have known her three or four years, perhaps.

Ques. Do you remember the date and the occasion of the failure of the First Nat. Bank and Williard S. Hickox.

Ans. Yes; I recollect it. I think it was the latter part of September, 1873.

Ques. State what reports, if any, were in circulation after the failure of the First Nat. B'k and Hickox, as to the effect of said failure on Mr. Colby, and the character of said report, how general and how soon after the failure.

Ans. The reports that I heard were that he had signed largely for and was heavily involved with Mr. Hickox and the 1st Nat. Bank. It was pretty generally talked of. I talked with a number of citizens myself on that subject. I cannot tell the day, or the exact time after the failure, but it was quite soon, I think.

Ques. Please state more definitely what was said as to Colby's being involved by these failures in these general talks and reports.

Ans. I cannot recall language. My impression is that the talk was that he was so largely involved that it would effect him seriously.

Ques. What was the state of the public minds on Saturday, Sunday, and Monday following the failure, as to the being excited,

72 and as to the general reports as to the failure of others.

Ans. It was intensely excited and generally alarmed as to reports. It was generally rumored that it must be disastrous to some of our business men.

(The whole of the foregoing deposition is objected to by solicitor for defendant as incompetent.)

Cross examination by solicitor for Mrs. Barbour:

1st question by solicitor for defendant. Was the talk you heard in regard to the effect of the failure on Colby based on his being involved as bail with—for Hickox.

Ans. That was one of the chief items, but ever after that, other things, such as his connection with the railroad, and his being a borrower of the bank, was talked of.

Ques. Of what bank was it said that he was a borrower of?

Ans. Of the First Nat. Bank, and also the Farmers' Nat. Bank. This was the first that the public knew that he was so large a borrower.

Ques. When did you first hear that Colby was largely on the paper of Hickox.

Ans. I cannot state the precise date. My impression is that it was soon after the failure of bank and Hickox; perhaps immediately after the public meetings that were held.

Ques. State definit'ly how long after.

Ans. I cannot state that definit'ly, but my impression is that it was the forepart of the week following the failure.

Ques. When were the meetings you refer to held?

73 Ans. The first meeting I think was held on Saturday after the failure; the meeting of the depositors and those interested in the bank and Hickox the forepart of the week following.

Ques. Were you present at the first meeting?

Ans. I was not.

Ques. Were you present at the second?

Ans. I was not.

Ques. Were there any other public meetings except those you refer to?

Ans. I think there was about the time the receiver was appointed.

Ques. Were you present at any of these meetings?

Ans. No, sir.

Ques. Who did you first hear say that Colby was largely on the paper of Hickox?

Ans. I cannot say definit'ly, but my impression is that it was my brother-in-law, Mr. Lindly.

Ques. When did you hear him speak of it the first time?

Ans. I cannot say definitely, but my impression is that it was about the time of these meetings. I think it was about the time of the second meeting or the meeting of the depositors.

Ques. Was it after that meeting?

Ans. I think it was immediately or on the day after that meeting.

Ques. Can you state certainly that it was at that time?

Ans. Can only say that it is my best impression.

Ques. Who did you next hear speak of it?

Ans. So general was the talk, that I cannot mention any name in particular.

Ques. Can you state the name of any other person you heard speak of Colby being upon Hickox's paper? and, if so, state whom.

74 Ans. I cannot state the names of any other persons; my impression is that it was with several

Ques. I have asked you to state the names; now, if you can, please do so, and state that alone.

Ans. I cannot recall any names.

Ques. Can you state the number of times and place when and where you heard such conversation in regard to Colby's being largely on Hickox paper?

Ans. The exact number of times I cannot state; as to when and where, it was immediately after the failure, and on the streets, with citizens.

Ques. What do you mean by immediately after the failure?

Ans. I mean during the forepart of the next week after the failure.

Ques. Are you any more certain now as to the time than you were a

few minutes ago, when I asked you to state definitely the time and you said you could not do so?

Ans. I am not any more certain now than I was then; I was not then certain as to the day, and I am not now certain as to the day.

COLUMBUS V. DOOLITTLE.

Testimony of Hiram R. Smith.

Also HIRAM R. SMITH, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by solicitor for complainant. State your name, age, and place of residence, and how long you have resided there?

Ans. My name is Hiram R. Smith. I am 60 years of age. I reside in Mansfield, and have resided here for fifty years.

75 Ques. State whether or not you had a general acquaintance with the citizens of Mansfield on the 1st day of October, 1873; and, if so, how long prior thereto.

Ans. I had, and it extends back to the time I came to Mansfield.

Ques. Are you acquainted with Hubbard Colby, Mrs. Melissa Barbour, and Allen B. Beverstock; and, if so, how long have you known each of them?

Ans. I have known Mr. Colby ever since he came to Mansfield; Mrs. Barbour ever since she was a small girl; Mr. Beverstock probably 35 years.

Ques. Do you recollect the date and occurrence of the failure of the First Nat. Bank and Williard Hickox? If so, state when.

Ans. The failures were in September, 1873. I think it was the last of the month.

Ques. What were the effects of these failures upon the community as to creating an excitement or otherwise?

Ans. It created a great deal of excitement amongst the people.

Ques. What reports were in circulation, if any, in and around Mansfield after the failure of the First Nat. Bank and Hickox as to the consequence and effect thereof to Hubbard Colby; how soon circulated after said failure, and whether or not the same was general?

Ans. There was a great deal of talk about how far it would extend, and a great deal of surmising as to how Mr. Colby was involved with Hickox. The talk commenced directly after the failure. I think that that answers the question. There was a great deal of talk.

Ques. State whether or not there was any reports in circulation as to Mr. Colby being largely liable with Mr. Hickox as bail and in-

76 dorser for Hickox and on account of the liability arising out of the construction of the M. C. and L. M. R. R.; if so, state how soon after the said failure, giving what was generally said and reported on that subject.

(Objected to as leading.)

Ans. I heard of nothing that was positive. The talk I cannot repeat. It was supposition, as far as I heard. I did not have a great deal of talk about it. There was several persons talked to me about it. It was a matter of suspicion, you might say.

Ques. Did you hear any reports at the time that Mr. Colby ceased to act as cashier. Farmers' Bank as to the cause of his ceasing to act as cashier, and as to the amount of his, Colby's, indebtedness to said bank; how general the report was known, giving what was generally said on that subject, if anything?

Ans. It was not a general report; the amount of his liabilities I did

not know at that time. The cause of his ceasing to act as cashier was his irregularities with the bank, as I understood at that time.

(The whole of the foregoing deposition is objected to by solicitor for defendant as incompetent.)

Cross-examination by solicitor for complainant:

1 ques. Did you learn by general report from those outside of the bank the cause of Mr. Colby's ceasing to act as cashier?

Ans. No; I learned it from those connected with the bank.

Ques. Were you a director of the bank at the time of his resignation?

Ans. I think not.

Ques. When did you become a director of the bank?

Ans. After the date of Mr. Anderson. I cannot fix the date.

77 Ques. You were a stockholder in the bank at that time, were you not?

Ans. I was.

Ques. Were you re-elected director of the Farmers' Nat. Bank in January, 1873?

Ans. I was.

Ques. Was Mr. Colby re-elected a director of that bank at the same time?

Ans. He was.

Ques. How long after that did he continue to act in that capacity?

Ans. I am not positive as to the time. It was after he was known to be liable in the Hickox cases.

H. R. SMITH.

Testimony of Thomas Douglass.

Also THOMAS DOUGLASS, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. Please give your name, age, place of residence, and how long you have resided there.

Ans. Thomas E. Doglass is my name. My age is forty five; I reside in Mansfield, and have resided here for since 1859, except I was absent for about five years.

Ques. What public position do you hold, and how long have you held the same, and have you a general acquaintance with the citizens of Mansfield?

Ans. I am now postmaster at Mansfield and have occupied that position since the 12th day of May, 1873, and have a general acqnaintance with the citizens of Mansfield.

Ques. How long have you known Hubbard Colby, Allen B. Beverstock, and Melissa Barbour?

78 Ans. I think I have known Hubbard Colby by sight for over 20 years, and Mr. Beverstock as long by sight, and have had personal acquaintance for about 10 years. I have no personal acquaintance with Mrs. Barbour. I think I have known her by sight for 3 or 4 years.

Ques. Do you recollect the dates and occurrence of the failure of First Nat. Bank and Williard Hickox? If so, state when it occurred.

Ans. I recollect the circumstance of the failure. It took place in September, 1873, and I think it was the 26th.

Ques. State whether or not there were any reports in circulation in the city of Mansfield after the said failure as to the effect and consequence

thereof to Hubbard Colby? If so, state how soon after said failure, the purport, character of the reports, and whether general or not?

Ans. The first news I had of the failure was from Mr. John Shellenbarger. Nothing was said at that by him or me about the effect on any one. The next day I heard it rumored that Mr. Colby had bailed Mr. Hickox to a large amount. I think it was the next day and at different times afterwards, by several parties. I also heard them express their fear that it would involve him largely. I heard several persons say that it would throw him into bankruptcy, and in those discussions I heard others say that they hoped it would not. I heard one person the evening before express his fears that Mr. Colby would go down with others; they were rather general.

79 Ques. State whether or not the subject of the failure of the said bank and Hickox was a general subject of conversation on the day of the failure and on other days immediately subsequent to the failure, and whether or not the effects of these failures upon Mr. Colby was generally named in the same connection.

(Objected to by solicitor for def. as leading.)

Ans. As I have stated before, I had a conversation with but one person in relation to the failure of the bank on the day on which it occurred; subsequent to that day the effects that the failure would have upon Mr. Colby and others doing a large business was pretty generally discussed. The failure of the bank and Hickox was the general topic of conversation for days after.

(The whole of the foregoing deposition is objected to by solicitor for defendant as incompetent.)

Cross-examination by solicitor for deft.:

Ques. Was the fact that Colby was largely on the paper of Hickox said to be the reason why he would be effected by the failure.

Ans. That was said to be the reason. I do not now recollect of any other reason; the fact of his having bailed him to a large amount and having been doing buisness with him is said to have been the reason. I did not mean on his bond; I meant bail as security on his notes.

Ques. With whom did you have the first conversation you speak of on the subject of the failure?

Ans. John K. Shellenbarger is the first man who mentioned it to me. The conversation I referred to in my previous answer was held with R. H. Rowland on the evening of the failure. In this conversation with Mr. Rowland Mr. Colby's name, with others, was mentioned.

80 Ques. Where was the conversation between you and Mr. Roland held?

Ans. At my house, in my sitting-room.

Ques. Where was the conversation between you and Mr. Shellenberger had?

Ans. It took place in front of the late residence of Rev. James Roland.

Ques. What business relation or other relation, if any, existed between Roland Shellenbarger?

Ans. Shellenbarger was Roland's deputy in the treasurer's office.

Ques. Was Roland the treasurer of Richland Co. at that time?

Ans. He was.

Ques. What relation are you to Roland?

Ans. My wife is Roland's half sister.

Ques. Was there any person present at the conversation between you and Roland and you and Shellenberger?

Ans. During my conversation with Roland nobody was at my house

except my family. My wife may have been in and out of the rooms. I do not remember whether she was or not. At the time Mr. Shellenberger made his statement of the failure of the bank Miss Amanda J. Roland and T. W. Roland were present.

Ques. What relation was Miss Amanda Roland and T. W. Roland to the treas. Roland?

Ans. Sister and brother.

Ques. Are you an att'y and counselor at law?

Ans. I am.

Ques. Did Shellenberger in that first conversation mention the fact of Colby's being on the paper of Hickox?

81 Ans. Mr. Colby's name was not mentioned at all. The conversation was not directed to me.

Ques. Can you give the day of the week on which you had the conversation with Roland?

Ans. I would not pretend to give it exactly, only I know it was in the evening of the day I had the talk with Shellenberger.

Ques. Was it in the conversation that evening with Roland, or in some subsequent one, that he mentioned about Colby being on Hickox' paper?

Ans. I am quite positive that there was nothing said about Colby's being on Hickox's paper that night, neither do I now recollect that Mr. Roland was the first to mention of Mr. Colby's being bail for Hickox, but in several conversations subsequent to that evening he did speak of Mr. Colby's being bail for Hickox.

Ques. Can you state the first time that Roland did mention that fact to you?

Ans. I cannot.

Ques. Was Roland at that time embarrassed in the affairs of the treasury?

Ans. Whatever Roland said to me he said it to me in the capacity of an attorney.

Ques. Can you state who you first heard say that Colby was largely on the paper of Hickox?

Ans. I cannot now positively state who it was that first spoke to me about it.

Re-examination:

Ques. State whether or not you had a conversation with Henry P. Davis within a few days after the failure of the said bank and Hickox as to the financial condition of Mr. Colby; if so, state what he said.

(Objected to by solicitor for defendant.)

82 Ans. Mr. Davis and I had several conversations after the failure of the bank and Hickox, and during the said conversation Mr. Davis spoke of the possible or probable failure of Mr. Colby, saying that he was on Mr. Colby's bond, I think, wherein Mr. Colby was executor of the Barbour estate. I think he said that Mr. Harvey Cook was the first man that called his attention to it and spoke of the effect it would have upon himself, Mr. Davis, if Colby should be broken up.

Ques. Did Mr. Davis in that conversation say anything about what Mr. Colby had said about his (Colby's) financial condition?

(Objected to by solicitor for def't as leading and incompetent.)

Ans. I am not positive as to what he said, but think that while he represented Mr. Colby on saying that it would embarras' or hurt him, he said he thought he would be able to pull through. I give it as my best recollection. I do not undertake to give the exact language of Mr.

Davis. The conversation to' place in my office before the clerks, and while Mr. Davis was acting as my clerk; whether my clerks heard it or not I do not know; the most of the time he spoke to me privately, and occasionally in the presence of the clerks.

Ques. Did not Mr. Roland, in the conversation with you within a few days after the said failure in substance state Mr. Colby had told him (Roland) that he (Colby) was broken up and would have to rub out his slate and commence anew again?

(Objected to by solictor for defendant as leading and incompetent.)

Ans. Mr. Roland and myself had several conversations. I do
83 not think that he used the langnage that Mr. Colby said he was broken up, but he represented Mr. Colby's having said to him that he either would have to or did not know but he would have to begin where he had a number of years before, and either said that he would have to or might have to rub out his slate and begin anew. I am not able to give the exact langnage used by them. Also, at times Mr. Roland represented that Colby said that he would pull through.

Recross-examination:

Ques. When did you have the conversation with Roland that you have last narrated?

Ans. Within a few days; and for a number of days he spoke to me frequently, after the failure.

Ques. How long after the failure did you have the conversation last mentioned?

Ans. About rubbing out his slate and commencing anew, I think it was either a week after the failure—it was not one conversation, but many, and they did not all occur in a week.

Ques. Can you undertake to swear, Mr. Douglass, that the conversation referred to in answer to the last question in your re-examination were within a week from the failure of the First National Bank and Hickox?

Ans. I do not pretend to say that all of the conversation took place within a week, but I give it as my best recollection that the substance of these conversations took place within a week after the said failure.

Ques. Can you state positively that any one of them did? and, if so state which one and what was said.

Ans. I cannot state positively, but, as I said before, I give it as my best recollection that these conversations, or their substance, took
84 place within a week. I am not able to give the order in which they occurred, neither can I give the language of those conversations other than that I have already given.

Ques. Were these conversations among the private conversations held between you and Mr. Roland in the relation of client and attorney?

Ans. They were not.

Ques. When were they held?

Ans. He has talked to me on the street in going down and coming up and at my house. This talk was not in relation to Mr. Colby alone, but his name was most always coupled with others.

Ques. Who was present at these conversations?

Ans. These conversations were so frequent after the failure of the bank and Hickox as to other failures that might occur, and in all probability that would occur, that I am unable to say who was present at different times, or how often we were talking together without any one being present. I never expected to be questioned on the matter and did not notice who if any persons were present. I speak now only from my

best recollection, and have endeavored to give in my answer the substance of the conversation, without giving the exact words used.

Ques. Where is Mr. Roland now?

Ans. I believe he is in Mansfield, Allegheny County, Pa.

Ques. Can you state when the conversation between you and Mr. Davis that you have related occurred?

Ans. I had a number of conversations with Mr. Davis, as he
85 was in the office with me, but the one spoken of in reference to himself was had within a few days after the failure of the bank and Hickox.

Ques. Can you state how long after the failure it was until you had the first conversation with Mr. Davis about his being on the bond of Mr. Colby?

Ans. It may have been a week. I do not think it was so long; but it may have been longer.

THOS. E. DOUGLASS.

Testimony of L. J. Tracy.

Also L. J. TRACY, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by solicitor for complainant. State your age, name, place of residence, and how long you have resided there.

Ans. My name is Lathrop J. Tracy; I am 49 years of age, and I reside in Mansfield, Ohio, and have resided here for about 20 years.

Ques. Do you recollect the date and occurrence of the failure of First Nat. Bank and Williard S. Hickox?

Ans. I remember the occurrence of the two failures but I do not remember the day of the month.

Ques. State whether or not there were any reports in circulation in the city of Mansfield after the said failure, as to the financial condition of Mr. Colby and his connection with Williard S. Hickox in business, the effects of the said failure upon him. If so, state what said reports were, how soon after the failure, and how general and public.

Ans. It was generally talked that Mr. Colby would be effected by the failure, because it was generally known that he and Mr. Hickox were on each other's papers; that the one indorsed for the other. It was
86 generally talked in connection with the failure of the bank and Hickox; immediately after the failure of the bank and Hickox, it was generally talked on the streets by a great many, and more especially by business men.

Ques. Please state more definit'ly what was said in the general talk that you have named; what the consequences of said failure, if any, would be upon Mr. Colby financially.

Ans. The failure of the bank was generally spoken of, and the parties that would be effected by it. Mr. Colby was spoken of among others, and that he, Colby, would be among the heaviest sufferers or loosers by the failure.

Ques. In the talk above referred to, what was said as to the failure resulting in the solvency or insolvency of Mr. Colby, if anything?

(Objected to by solicitor for defendant as leading.)

Ans. I don't remember that it was brought up in regard to his solvency or insolvency.

Ques. What was your occupation at the time of the said failure and immediately thereafter, and to what extent in the promotion of your business did you mingle with the people and the citizens in general?

Ans. Buying and selling grain and produce generally. I met the people in the way of business daily.

(The whole of the foregoing deposition is objected to by solicitor for def't as incompetent.)

Cross-examination:

1st ques. Was the fact that Colby was largely on the paper of Hickox said to be the reason why he would be effected by the failure of the bank and Hickox?

87 Ans. It was, as I understood it.

Ques. How long after the failure was it before it was generally known to what extent Colby was on Hickox's paper?

Ans. I do not know that it was known as to what extent he was involved with Hickox, but these conversations and reports I have spoken of were talked and put in circulation immediately after the failure.

Ques. I ask you how long after the failure it was until it was known to what extent he, Colby, was involved with Hickox?

Ans. I do not know that the extent was known or is known.

Ques. Did you hear in these reports you have spoken of the amount to which he was involved to Hickox?

Ans. If I did I do not now remember that any amount was mentioned.

Ques. Can you name the persons you heard say Colby was involved for Hickox?

Ans. I cannot; it was general talk.

Ques. Can you name any one of them?

Ans. No, sir.

LATHROP J. TRACY.

Testimony of James Purdy.

Also JAMES PURDY, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State your name, age, place of residence, and occupation.

Ans. My name is James Purdy. I am 81 years of age. I reside in Mansfield, O. I am a lawyer by occupation.

Ques. How long have you resided in the city of Mansfield, O.?

Ans. Fifty-one years.

88 Ques. How long have you known Hubbard Colby, Allen B. Beverstock, and Melissa A. Barbour?

Ans. I have known Mr. Colby over 20 years and Mr. Beverstock over 20 years, and Mrs. Barbour over 20 years.

Ques. What portion of the time that you have known Mr. Colby have you been connected with the Farmers' Bank of Mansfield, O., and what has been your connection with the said bank during that time?

Ans. I was president of the Farmers' Bank from 1847, I think, until the close of that bank, 1865; then that bank was reorganized into the Farmers' National Bank, of which I became president 1865, and am yet.

Ques. What has been Messrs. Colby and Beverstock's connection with the said bank, and for what length of time?

Ans. Mr. Colby became cashier of the Farmers' Bank in 1851, I think, and continued cash' until the close of the charter, and was then chosen cashier of the Farmers' National Bank, and continued as such cashier until March, 1871. He became director of the Farmers' Bank in 1856, or about that time, and continued as such until the close of the charter, and was then elected a director of the Farmers' National Bank, and con-

tinued as such until early in January, 1874. *Was* Beverstock was a director of the Farmers' Bank as early, I think, as 1850, and continued director until the close of the charter in 1865, at which time he was elected director of the Farmers' National Bank, and has been ever since, and is now, acting as such director. Mr. Beverstock was a stockholder from the organization of the Farmers' Bank until its close, and
89 was also from 1865, and is yet, a stockholder in the Farmers' National Bank. Mr. Colby became a stockholder in the Farmers' Bank pretty soon, I think, after he was elected cashier; at least, within three years, and continued until the close of the charter; then he became a stockholder in the Farmers' Nat. Bank, and is yet, I believe.

Ques. During this time, where did Mr. Beverstock reside, and how general was his acquaintance in Mansfield, and how frequent was his visits thereto during that time?

Ans. He resided in Lexington, in this county, six miles from Mansfield, O.; his acquaintance was very intimate with the people in Mansfield; he was a man of business and very frequently in the city.

Ques. During the fall of 1873, including the months of August, September, and October, what access to and knowledge of had Mr. Beverstock of the assets and condition of the Farmers' National Bank, of Mansfield, O.?

Ans. He had always at all times access to the books of the bank, and the second Tuesday in September, I think, there was a meeting of the directors, Mr. Colby, Mr. Beverstock, and Mr. Smith: they examined the assets of the bank and compared them with the books and certified that they were correct; this I take from the books; I was not present. The charter required the directors to examine the papers and compare them with the books.

Ques. What was the cause of Mr. Colby's ceasing to act as cashier of the Farmers' National Bank?

Ans. In March, 1871, the examiner sent from Washington to examine the bank. He discovered an attempt on the part of Mr. Colby and Hade to "stuff the bank," as we call it, and so reported to the board
90 of directors, and also to the comptrol'er at Washington. An order from Washington was issued directing the removal of Mr. Colby, but he had resigned before the order was received; I think on the same day that the report was made to the directors.

Ques. You may state what knowledge Mr. Beverstock had of the matter stated in the above answer.

Ans. The examiner reported to me in the evening, after making the examination. I called a meeting of the board the next day, amongst the rest, Mr. Beverstock, who came. We held a meeting of the board. Mr. Beverstock was present, and the examiner made a verbal report to the board, about as follows: That he had examined the bank the day before; that when he came in Mr. Colby assured him that all was right, asked to be excused a few moments, and step'ed out. He returned. Mr. Hade, a clerk in the bank, then step'ed out; when Mr. Hade returned he stop'ed him and told him that he was authorized to administer oaths. He administered the oath and asked him what he had under his coat. I cannot give the language, but in substance he replied that he had ten thousand dollars which he was about to put into the vault. He refused to go any further in examining the bank, but reported at Washington the condition he had found the bank in. Mr. Colby and Mr. Hade were present and said nothing. We went shortly afterwards in a separate room; Mr. Beverstock present, but Mr. Colby absent. Mr. Edward Sturgis, sen., one of the members of the board, told us that Mr. Colby

had been at the Richland Nat. Bank to borrow fifteen thousand dollars that morning of the day of the examination, and that they let
91 him have ten thousand dollars.

Ques. State the amount and nature of the indebtedness of Mr. Colby to said bank at the time of his resigning as cashier.

Ans. He owed on notes twelve thousand seven hundred twenty dollars; there was a note of $7,407, made by Sol. Lewis, on which there was no security. Mr. Lewis claimed that it was not his note, and Mr. Colby assumed the payment of it. To that may be added whatever may be inferred from the testimony as to the deficit in the bank, if there be any. $7,407 matured in April, 1871; $4,720 matured in June the 8th, 1871; 8,000 June 10th, 1871. This is all I find on the books at that date. The Lewis debt did not appear upon the books as Colby's debt, but appeared in the name of Lewis alone. Mr. Lewis claimed that that note was given a good many years ago, when he, Mr. Colby, Mr. C. T. Sherman, James McBride, and James Weldon, and perhaps some others, were engaged in banking in Indiana, the avails of which went to that bank; said when it was first issued other names were on it; it was renewed from time to time and it was sent out to him in the country, where he lived, and he signed and returned it, and was not aware that there was no other names on it. Mr. Colby took up the note and paid part of it and put in a new note for six thousand dollars. That was in April, 1871.

Ques. Has the above indebtedness been paid, other than what you have stated?

Ans. The $4,720 note has been reduced to $2,831. The $8,000 I have not traced up. The $6,000 has not been reduced any, but increased by the accumulated interest.

Ques. State the amount and nature of H. Colby's indebtedness
92 to the Farmers' National Bank, September 26th, 1873.

Ans. H. and H. H. Colby, $2,500; Con. Sherman and Co. and H. Colby, $2,831; H. Colby and H. H. Colby, due December 1st, 1873, and dated August 30th, 1874, $7,500; Hade and Colby, dated Sept. 15th and due November 17th, 1873, $10,000. There was a draft for $10,000 dated Sept. 7th, 1873, due in December, endorsed by H. Colby, and endorsed by Mr. Hade as cash, payable at the 3d Nat. Bank, in Cincinnati, and the money was received on it by Mr. H. Colby. The first knowledge I had of that was a notice of protest for non-payment served on our bank during December and our bank paid it. This debt did not appear on the books of the bank. No part of the debt that stood upon the books has been paid since 26th of S'pt., 1873; with the $10,000 Cincinnati debt there were collaterals deposited; these were sold for $6,050, I think, and the balance paid by the bank and is still due the bank from Mr. Colby. The collaterals consisted of $10,000 stock in the Farmers' National Bank and $5,000 of Mansfield Gas-Light Co. stock. H. H. Colby is the son of H. Colby.

Ques. State the nature and amount of Jacob Hade's indebtedness to said bank Sept. 26th, 1873.

Ans. He made a note Sept. 15th, 1873, due Sept. 17th, 1873, with H. Colby on it for $10,000, which remains unpaid. The bank has a claim against him for $5,000 as his liability as cashier. This $5,000 did not appear as a debt against him on the books Sept. 26th, 1873.

Ques. What general publicity, if any, was given at the time and subsequent thereto of the cause of the resignation of Mr. Colby as cashier of said bank?

93 Ans. It was not noticed in the papers at all. It was talked of as other things in town, and was generally known, I think.

Ques. Were you at home at the time of the failure of the First Nat. Bank and Williard Hickox; if not, when did you return?

Ans. I cannot say whether I was a' home or not. I was at home a few days before, and on and after the 2d day of October, 1873.

Ques. State whether or not there were any reports in circulation in the city of Mansfield after the failure of the First Nat. Bank and Williard L. Hickox as to the effects of said failure upon Hubbard Colby, financially; if so, state how soon after said failure, the nature and character of said reports, and how general.

Ans. There was reports that he might suffer from the failure of Hickox, but I do not know how soon after. Such as you hear on the streets; they were suspicions merely that he would be endangered by the failure of Hickox. On the 2d of October I took charge of our bank under an inexperienced cashier. There was a good deal of a rush of depositors at that time. Mr. Colby was known to be connected with our bank, and these interrogatories were put to me: "Are you not likely to suffer by it?"

Ques. You say that you were at home two or three days before the 2d of October, 1873. State when you first heard the reports with reference to the said failure.

Ans. I may have been at home and heard them the very day the failure occurred; I do not recollect.

Ques. What is your best recollection as to how soon you did hear them after the failure?

94 Ans. I have no recollection of being absent in the latter part of September, 1873, and I cannot recollect at what time the suspicions of Mr. Colby being effected by the failure was mentioned to me.

Cross-examination by solicitor for def't:

1st ques. State, if you can, the amount of stock in the Farmers' Nat. Bank owned by Mr. Colby and Mr. Hade in Sept., 1873, as shown by the books of the bank.

Ans. The books of the bank showed Mr. Colby, I think, one hundred and five shares of $100 each; Mr. Hade owned none. There was $10,000 of this $10,500 hypothecated as above stated.

Ques. Was there anything on the books showing this stock to have been hypothecated at that time, or for months thereafter?

Ans. Not to my knowledge was there anything on the books showing it to have been hypothecated at any time.

J. PURDY.

Testimony of Rebecca Simmons.

Also Mrs. REBECCA SIMMONS, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. How long have you been acquainted with Hubbard Colby and Mrs. Melissa Barbour.

Ans. I think over 20 years; I could not say exactly how long.

Ques. Was Hubbard Colby indebted to you on the 26th of September, 1873; if so, in what amount, and when did the same become due?

Ans. Yes, sir; the amount was $1,800. It was due prior to this time, and evidenced by a note for money loaned.

95 Ques. Do you recollect the occasion of the failure of Williard S. Hickox and the First National Bank on the 26th of September, 1873?

Ans. I do.

Ques. Where were you residing at the time of the said failure, and where are you now residing?

Ans. In the city of Mansfield.

Ques. Did you ever have a conversation with Mrs. Melissa Barbour on the subject matter of her husband's estate in the hands of Mr. Colby, or anything on that subject?

Ans. I have had such a conversation.

Ques. Have you had more than one conversation with Mrs. Melissa Barbour; if so, when was the first?

Ans. I have had more than one conversation, but I cannot give the dates; not expecting to be called on for it, I cannot give the exact time.

Ques. Had you any conversation with her on that subject prior to the said failure?

Ans. I do not know that I did have a conversation with her, but I heard her speak of it.

Ques. Please state all that she said to you, and you to her, on that subject before the time of said failure.

Ans. I cannot do it. I do not know what it was sufficient to give it. I heard her say that Mr. Colby had control of her property, and that she had to go him for all of her money.

Ques. Is that all you can remember that was said on that subject between you?

Ans. I do not think of anything more.

Ques. Did you have a conversation with Mrs. Barbour, about the time or after said failure, on the subject-matter of her husband's estate in the hands of Mr. Colby?

96 Ans. I did soon after.

Ques. Supposing the said failure to have occurred on Friday, 26th day of September, 1873, how soon would you say thereafter was the first conversation on that subject had?

Ans. It might have been one, or two, or four weeks after the failure that I talked with her about it.

Ques. State fully what each of you said in that conversation on that subject; and if you cannot recollect the words give the substance of what was said by each.

Ans. The substance was that we thought that both of us were going to be the loosers by Mr. Colby. I do not know that she so expressed herself, but she seemed as though she was afraid it was so. She said that Mr. Colby had given her a mortgage on property as security.

Ques. State what you mean by saying that she seemed to be afraid.

Ans. She is a woman not accustomed to business, and she seemed to be afraid that there was something in this financial crash, and that she was afraid she would not get her money, and she said that Mr. Colby had secured her as far as he could, but she did not feel as though that was as safe as the money. This is not the words, but it is about the substance. This talk was in the first conversation after the failure.

Ques. State what she said in that conversation, if anything, as to why she took a mortgage from Mr. Colby to secure her.

97 Ans. I do not know as she said anything as to why she took the mortgage. I do not recollect it.

Ques. Did you have a second conversation with her on that subject; if so, what was said?

Ans. I have talked with her at different times on that subject, and do not recollect that there was anything further said on this subject.

Ques. In any the conversations you have had with Mrs. Barbour,

state whether or not she said to you anything about others talking to her on the subject of her husband's estate in the hands of Mr. Colby; if so, what.

Ans. I could not say. I presume she has, but I could not repeat a word that she has said to me on that subject.

Ques. If you cannot repeat the words or remember them, please give the substance of what she said on that subject.

Ans. I cannot do it. I know that we have had a great deal of talk, but I cannot repeat it so as to give you any information on that subject.

Ques. Do you say that you cannot remember anything more that Mrs. Barbour has said on that subject in any of the conversations with her?

Ans. I know of nothing more that she has said on that subject. I remember of a great many things that she said, but I do not think that it has any bearing on this subject.

Ques. Were the things you remember on the subject of her husband's estate in the hands of Mr. Colby?

Ans. Yes; I remember of some things she said about it.

Ques. Did you in these conversations say anything to Mrs. Barbour as to her husband's estate in the hands of Mr. Colby or concerning Mr. Colby's property, or financial condition; if so, what?

98 Ans. I told her I thought she was very foolish to trust her property in the hands of Mr. Colby, as she had done, or any other person and not know anything about it. She said that she had the utmost confidence in him and believed that he would do what was right about it, and that her husband had called him (Mr. Colby) and placed the property in his hands.

Ques. State anything further you said on that subject.

Ans. I recollect of asking her if she supposed that Mr. Colby had any money.

Ques. Was that question asked after or before the failure of the bank and Hickox?

Ans. Afterwards; we did not have any talk about it before.

Ques. What was her reply?

Ans. She said she did not know. He always talked to her as though he had none. She said she could not get any from him.

Ques. Can you fix about the time the last mentioned conversation occurred?

Ans. No, sir; I cannot.

REBECCA SIMMONS.

Testimony of Patrick Ford.

Also PATRICK FORD, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State, if you please, your name, age, place of residence, and how long you have resided here, and your occupation.

Ans. My name is Patrick Ford. My age is 28 years. I reside in Mansfield, O., and have made my home in Mansfield, O., for the last 28 years. I am a grocer by occupation.

99 Ques. Do you recollect the occasion of the failure of the First National Bank and Williard S. Hickox on the 26th of September, 1873?

Ans. I do.

Ques. What reports, if any, were in circulation after said failure as to the financial condition of Hubbard Colby, and the effects of said failure

upon him. How soon after the said failure were the same circ
how general?

Ans. There were reports in circulation that Mr. Colby h
a great many notes for Williard Hickox, and the consequence
that it would break Mr. Colby up. It was talked within two
should think, after the breaking of the bank. It was the general topic
of conversation.

Ques. At the time of the failure and subsequent thereto, where was your place of business in Mansfield, O., and how long had you been located there?

Ans. On the southwest corner of public square. I had been there about four years.

Ques. How near was that to the residence *to* Mrs. Melissa A. Barbour, and where did she do her trading during September and October, 1873, in the grocery line?

Ans. It was about 70 y'ds from her residence. She did her trading with the firm of Ford and Bell, of which I was a member.

Ques. State whether you had any conversation with Mrs. Barbour as to the financial condition *in prospects* of Mr. Colby, or as to the effects and consequences of the failures of First Nat. B'k and Williard Hickox on him, Colby, after said failures; if so, state what was said.

Ans. Mrs. Barbour asked me what the general opinion was, and I told her that I thought that it would use Mr. Colby up. There was not much said between her and me in regard to the affairs of Colby and Hickox.

100 Ques. State anything else that may have been said between you and Mrs. Barbour on that subject. Give fully all that was said on the subject of Colby's condition and the effects of said failures on him.

Ans. I recollect something like this: That she said that she did not think that Mr. Colby was on much paper for Mr. Hickox.

Ques. When she remarked, as you have stated in the last answer, what, if anything, did you say to her?

Ans. It was something like this: That Mr. Colby' affairs were something that I know nothing about, and judging from the man, I did not suppose that he would indorse very largely.

Ques. You say in one of your above answers that "Mrs. Barbour asked me what the general opinion was," and that "I told her that I thought it would use up Mr. Colby." Please state what you said at that time, if anything, as to what public opinion was on that subject, giving what you said.

Ans. The public opinion was that it would use Mr. Colby up. As for myself I could not say, for I had not much of an opinion in regard to it.

Ques. Supposing the said failure to have occurred on Friday the 26th day of September, 1873, when would you say that the conversation that you have testified concerning took place?

Ans. About the first of the week following.

Ques. State whether or not Mrs. Barbour in any of the conversations or talk above named said anything as to what other people had said to her on that subject; if so, what.

101 Ans. I do not remember of anything she said.

Cross-examination by sol. for def't:

Ques. How many conversations had you with Mrs. Barbour on the subject you have testified concerning?

Ans. We talked on the subject of Mr. Colby's breaking up as much as a half dozen times.

Ques. When was the first time?

Ans. About the first of the week following the failure of the First Nat. Bank.

Ques. What day of the week?

Ans. I cannot say on what day of the week.

Ques. Where was the conversation?

Ans. At Mrs. Barbour's house.

Ques. Who was present?

Ans. No one.

Ques. What part of the house was it in?

Ans. Kitchen.

Ques. What time of day?

Ans. I cannot say.

Ques. What was your business at her house at that time?

Ans. I used to go over quite often to carry over provisions; I suppose it was that.

Ques. How long were you there?

Ans. I cannot give any definite time.

Ques. Was this before or after you heard the reports in regard to Colby, of which you have spoken?

Ans. It was after.

Ques. How long after?

Ans. I cannot say definitely.

Ques. Was it ten days afterwards?

Ans. I should think it was.

Ques. In the reports you heard of the effects of the bank and Hickox, was the effects on Colby the result of his indorsements for Hickox?

102 Ans. It was.

Ques. Can you say how soon it was known after the failure that Colby had indorsed largely for Hickox?

Ans. No, sir; I cannot.

Ques. Do you know when the result of the examinations made by the officers of the bank disclosed the fact of these indorsements?

Ans. No, sir; I do not.

Ques. Have you stated all that was said between you and Mrs. Barbour in the conversations you have mentioned?

Ans. No, sir; I have not stated all.

Re-examination by sol. for comp.:

1st ques. In your examination-in-chief you say that you had conversations with Mrs. Barbour the fore part of the week following the failure, in which you give your opinion as to the public opinion of the effects of the failure upon Colby, and in your cross-examination you say som'thing occurred you should think ten (10) days after; please explain yourself.

Ans. We talked about the failure in ten days after it.

Ques. State whether or not you wish to be understood now as before stated that in the fore part of the week following the said failure you had a conversation with Mrs. Barbour in which you said that public opinion was that it would use Colby up.

(Objected to by solicitor for def. as leading.)

Ans. I would not say positive it was the first of that week that it occurred.

Ques. You say that on cross-examination you had as much as a half a dozen talks with Mrs. Barbour on the subject of Mr. Colby's

103 breaking up. Supposing, as before stated, that the failure occurred on Friday, September 26th, 1873, when would you now say that Mrs. Barbour commenced talking to you on that subject?

Ans. It was some time after; I cannot say how long.

Ques. Was there not great excitement and much talk following these failures?

(Objected to as leading.)

Ans. There was.

Ques. State now whether or not you have any reason to change your answer-in-chief, wherein you say that these conversations commenced about the fore part of the week following the failure.

(Objected to as leading, and as a cross-examination of his own witness.)

Ans. The conversation in regard to Mr. Colby did not commence the fore part of the week following the failures; I think it was the conversation in regard to Mr. Hickox.

Ques. In the first conversation you had with Mrs. Barbour on the subject of Colby's breaking up, did she say anything about having received a mortgage to secure her claim against Mr. Colby?

Ans. She said that Mr. Colby told her that her matters were all fixed.

Ques. What else did she say on that subject?

Ans. She said that Mr. Colby had made her secure with mortgages, but that she had not them in her possession, and she thought that she was all safe.

Ques. Did she say in that conversation what he had done for his other creditors; if so, what?

Ans. She did not say anything in regard to any other creditors.

Ques. Where did she say her mortgage for security was, or what had been done with it, or whose was it, and state fully all that was said on that subject.

104 Ans. She said she did not know where it was or what it was on, and she said that Colby said that she was secure.

Ques. Who did she say, if any one, acted for her in securing it?

Ans. She did not say.

Ques. When did she say that Mr. Colby told her that she was secure?

Ans. In one of her half a dozen talks I had with her; I could not say which one.

Ques. When was it that she spoke on the subject as to whether Colby was a large indorser on Hickox paper?

Ans. It was in one of the talks; I cannot say when.

Ques. Was it before or after she spoke of the mortgage?

Ans. I cannot say to a certainty.

Ques. When was it that she spoke of a mortgage, and that she did not know what property it was on or where it was?

Ans. It was in one of the talks we had; I cannot say which talk.

Ques. Did you say anything to her about the advisability of her getting her claim against Colby secured; if so, what?

Ans. I did not.

Ques. Did she at any time in any of these conversations say anything about what Mr. Colby had done with her money or property or the money or property of her husband's estate, or on the subject of his management or use of it, or the difficulty or otherwise of getting it or money from Mr. Colby or anything on these subjects; if so, what?

Ans. She never said anything to me of the disposition Mr. Colby had made of the money.

PATRICK FORD.

Testimony of John B. Netscher.

Also JOHN B. NETSCHER, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

105

1st. ques. by sol. for comp. State your name, age, and residence, and how long you have resided there.

Ans. My name is John B. Netscher. I reside in Mansfield, O., and have resided here for 28 years.

Ques. What public position did you hold on the 26th day of September, and for how long prior to that time did you fill that position; and state whether or not then and prior thereto you had a general acquaintance in Mansfield, O.

Ans. I was mayor of the city of Mansfield on 26th of Sept., 1873, and had filled that position for about 2 and a half years prior to that time. I had a general acquaintance at that time and for some time prior thereto.

Ques. Do you recollect the date and failure of the First Nat. Bank and Williard S. Hickox?

Ans. I think I do. I was not at home that day; but I recollect it, for I returned, I believe, that evening.

Ques. State if there were any reports in circulation in the city of Mansfield, O., as to the financial condition of Hubbard Colby, and the effects and consequences on him of the failure of 1st Nat. Bank and Williard S. Hickox. If so, how soon after the said failure, supposing the same to have occurred on Friday, the 26th of Sept., 1873, and how general were they?

Ans. I think that the reports about Mr. Colby sprung up at the time of the examination of that broken bank. It was the talk some time after the failure amongst people that it would take Mr. Colby with it. I think it was talked of during the week following the failure. I cannot say what time in the week; as I said before, it sprung up during the examination of the bank, which took several days, I believe. It was generally talked of amongst business men.

106

Ques. Were you interested in the said bank by reason of being a depositor of money or other valuables, and do you recollect how soon after the Friday of the failure it and its assets and condition were examined into, and were you present any of the time?

Ans. I was interested then; I was a depositor. It is pretty hard for me to recollect. I think it took some time before they made out the real assets of the bank.

Ques. How soon did the examination commence after the failure?

Ans. I think it commenced the week following. I saw Mr. Hedges and other directors in there figuring, but I did not know exactly what they were doing.

Ques. How soon in the week following do you say it commenced?

Ans. I cannot recollect the date.

Cross-ex.:

Ques. In the reports of which you have spoken, was it said that the reason why it would effect Mr. Colby's financial condition was because he was a large indorser for Hickox?

Ans. It was.

JOHN B. NETSCHER.

Testimony of James Dickson.

Also JAMES DICKSON, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State your name, age, place of residence, and occupation.

107 Ans. My name is James Dickson. I am 45 year old. I reside in Mansfield, Ohio. I am president of the Mansfield Banking Co.

Ques. How long have you resided in Mansfield, and have you a general acquaintance with the people thereof?

Ans. I have resided in Mansfield 27 years. As to my general acquaintance, it is about as usual.

Ques. Do you recollect the date and occasion of the failure of Williard S. Hickox and the First National Bank of Mansfield, O.?

Ans. I cannot name the date. I think it was some time in October; I think in the first part of the month—on Thursday.

Ques. Do you recollect any reports being in circulation in the city of Mansfield after said failure as to the financial condition of Mr. Colby as to the manner, if at all, said failure would effect him. If so, state what said reports were, and how soon after said failure, and whether general or otherwise?

Ans. The next Monday after the failure I was on the street, and I heard that Mr. Colby was on paper, and that it was likely to effect him. It appeared to be frequently talked of. I heard it frequently, you might say.

Ques. Please state more definitely the character of the reports as to the effects of said failure upon Mr. Colby.

Ans. The report was that he was on paper with Williard Hickox. I have forgotten the amount it was stated, exact. The character of the reports was that it would be the means of Mr. Colby's failing.

Cross-examination:

1st question by solicitor for def. In the reports you have stated that you heard, was it said that the cause of the failure effecting Colby was that he was an indorser on Hickox paper?

108 Ans. The general report that I heard appeared to be that he was on his paper.

Ques. Was that the reason assigned why he would be effected financially?

Ans. That was the talk.

Ques. Do you know how long it was after the failure until it was ascertained to what amount Colby had indorsed for Hickox?

Ans. I do not; only from the reports.

Ques. Do you know that there was an investigation made by the officers of the bank into its affairs before the fact of his having indorsed for Hickox was publicly known?

Ans. No, sir.

Ques. Did you learn how that fact was ascertained?

Ans. I did not.

Ques. When was the bank first opened after the failure?

Ans. The bank was not opened at all since the failure.

Ques. Who took charge of its affairs since the failure?

Ans. Mr. Hade has been appointed receiver.

Ques. Did he have charge of it from the time of the failure?

Ans. He has done all that I know has been done in regard to it.

Ques. Did you hear the amount stated of the paper on which Colby was liable for Hickox?

Ans. I did, but I do not recollect the amount.

Ques. Who stated the amount?

Ans. I do not recollect.

Ques. May you not be mistaken as to having heard that amount stated on the Monday following the failure?

Ans. My best impression is that I am not.

109 Ques. May it not possibly have been that you heard the fact of Colby's being on Hickox's paper, and the amount for which he was liable, was stated to you the next week after you have mentioned for the first time?

Ans. My best impression is that it was on the first Monday after the failure.

Ques. Can you state who was present the first time you heard that statement?

Ans. I think I can—one or maybe more.

Ques. Name them.

Ans. Harvey Hall was one. I will not be positive of any more.

Ques. Where did you hear it when Harvey Hall was present?

Ans. I heard it on the corner of 3d and Main streets.

Ques. On the street or in the house?

Ans. I heard it on the sidewalk.

Ques. Who made the statement at that time?

Ans. I cannot recollect.

Ques. Had you any interest in the matter of its effecting Colby?

Ans. None at all.

Ques. Can you state, then, with certainty the date on which it took place?

Ans. I could to refer to my books which I have got.

Ques. Can you make a definite statement of the date now?

Ans. I cannot.

Ques. Can you name any other persons who were present except the one you have named?

Ans. James Steward, I think, was present.

Ques. Are you sure he was?

Ans. That is my best impression.

Ques. Are you certain of it?

Ans. I feel sure that he was present.

Ques. Why did you not mention him when you named Harvey Hall before?

110 Ans. Because I remember now the expression that he made to me which put me in recollection of his being there or present.

Ques. Now can you not state the amount since your memory has been refreshed by reflecting?

Ans. I cannot recollect the amount.

Ques. Can you not now recollect who stated the amount?

Ans. I cannot.

Ques. Did you hear these matters talked on any other day than that you have mentioned?

Ans. I think I have heard them spoken of.

Ques. When?

Ans. I cannot recollect the dates.

Ques. Can you recollect any of the dates?

Ans. I cannot.

Ques. Were you somewhat excited for some time after this failure in

regard to financial affairs which may have led to some confusion in your mind?

Ans. I think not so as to disturb my mind.

Ques. Were you somewhat excited?

Ans. I do not know but that I did walk a little quicker.

JAMES DICKSON.

Testimony of E. W. Smith.

Also E. W. SMITH, of Mansfield, in said district, of lawful age, being by first duly sworn, deposes as follows:

1st question by solicitor for complainant. State, if you please, your name, age, and place of residence, and occupation.

Ans. My name is E. W. Smith; my age is 52 years; I reside in Mansfield, O.; I am an insurance and real estate agent by occupation.

Ques. How long have you resided in Mansfield, and have
111 you a general acquaintance with the people thereof?

Ans. I have been living in Mansfield for about 30 years, and have a general acquaintance with the people.

Ques. Do you recollect the date and occasion of the failure of the First Nat. B'k and Williard Hickox?

Ans. Yes, sir.

Ques. Do you recollect any reports being in circulation in the city of Mansfield after said failure as to the financial condition of H. Colby, or as to the manner, if at all, said failure would effect him? If so, state what the reports were, how soon after said failure, and whether general or otherwise.

Ans. Yes, I remember there was a general conversation in regard to the failure—after the failure of the bank. It was generally reported that Mr. Colby and Hickox were connected with each other in business. Relative to that it would be likely to effect Mr. Colby financially. I have the impression that I heard something like this, that Mr. Colby was on Hickox's paper, and Hickox was on his. That Colby was on Hickox's paper to the amount of some sixty thousand dollars, and that Hickox was on Colby's paper to the amount of forty or fifty thousand dollars. It was general, I think, and was quite soon after the failure during the excitement.

Ques. Supposing the failure of the said bank and Hickox to have occurred on *the* Friday the 26th day September, 1873, how soon thereafter would you say the reports of which you speak were in general circulation?

Ans. The first of the week following the failure.

Cross examination by solicitor for comp't:

Ques. Were the reports that Colby would be financially effected
112 which you have named, based on the fact that he was involved on the paper of Hickox?

Ans. That is the way I have understood it.

Ques. Can you state when it was ascertained that Colby was largely involved on the paper of Hickox?

Ans. I cannot.

Ques. Can you state definitely what time you heard the reports you have mentioned in your examination-in-chief.

Ans. I could not state it definite, sir.

Ques. Could you state positively that such reports were in circulation prior to the disclosure made by those who examined into the affairs of the First Nat. Bank after its failure?

Ans. I do not know how long it was until the facts were obtained in regard to the condition of the bank. I do not know whether it was 3, 5, or 30 days.

Ques. Was not the fact that Mr. Colby was involved on Mr. Hickox paper made known through the examination that was had in the affairs of the bank?

Ans. I cannot tell whether that was the case or not.

Ques. Can you state with certainty the date when you first heard it generally reported that Colby was largely involved on the paper of Hickox?

Ans. I cannot state the day, but it is my impression that it was a few days after the failure.

Ques. How many, can you state?

Ans. I could not, sir.

Ques. Was it more than ten (10) days?

Ans. I think not.

Ques. Can you be certain on the point?

113 Ans. It is my impression that it was not ten days, but I cannot be certain in regard to the number.

Ques. What was the date of the failure of the First National Bank of Mansfield and Williard Hickox?

Ans. It was the 26th day of September, 1873.

Ques. what day of the week did it occur upon?

Ans. On Friday.

Ques. What has refreshed your recollection as to the day and date?

Ans. We were depositors in the bank and were interested in our deposit, and remember the fact from that.

E. W. SMITH.

Testimony of William Laughridge.

Also, WILLIAM LAUGHRIDGE, of the city of Mansfield, Ohio, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State, if you please, your name, age, place of residence, and occupation.

Ans. My name is William Laughridge. I am 57 years of age. I reside in Mansfield, Ohio. I am a physician and surgeon by occupation.

Ques. How long have you resided in Mansfield, O.; and have you a general acquaintance therein?

Ans. Since the spring of 1849, and I have a general acquaintance therein.

Ques. Do you recollect the occurrence of the failure of the First Nat. Bank and Williard S. Hickox.

Ans. I do.

Ques. State whether or not there were any reports in circulation in the city of Mansfield, after said failure, as to the financial condition of Mr. Colby, and the effects and consequences that said failure would have upon him, if any; if so, what these reports were, and how general or otherwise.

114 Ans. I do not recollect the exact time as to whether it was immediately or for some time after, but I was told that Mr. Colby and Hickox were borrowing money conjointly, and it was supposed that Mr. Hickox failure might involve Mr. Colby. I do not know whether that was generally reported or not.

Ques. Supposing this failure to have occurred on Friday, the 26th of September, 1873, when would you say that you heard the talk that you above stated?

Ans. It was some time after, shortly after the failure of Hickox, probably within two weeks.

Ques. Can you state how frequently you heard the talk above stated, and whether on the streets or elsewhere?

Ans. But once that I recollect of distinctly; it was on the street.

WM. LAUGHRIDGE.

Testimony of Thomas J. Robinson.

Also, THOMAS J. ROBINSON, of the city of Mansfield, O., in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State your name, age, place of residence, and occupation.

Ans. My name is Thomas J. Robinson. My age is 57 years. I reside in Mansfield, O. I am an insurance real estate agent by occupation.

Ques. How long have you resided in Mansfield, and have you a general acquaintance therein?

Ans. I came here in 1837. I have a somewhat general acquaintance.

Ques. Do you recollect the date and occasion of the failure of the First Nat. Bank of Williard Hickox?

115 Ans. Yes, I do the occasion, and my impression is that the date was about the last of Sept., 1873.

Ques. State whether or not there were any reports in circulation in the city of Mansfield, after said failure, as to the financial condition of Hubbard Colby, and the effects and consequences of the failure of 1st Nat. Bk. and Hickox on him, Colby; if so, what were said reports, how general or otherwise?

Ans. I think it was generally talked that Colby would loose pretty heavily by the failure of Hickox; I have heard that kind of talk.

Ques. Supposing the said failure to have occurred on Friday, Sept. 26th, 1873 :how soon thereafter do you say you heard these reports?

Ans. I could not give the definite time.

Ques. State about what time you heard them.

Ans. It might have been within two weeks and it might have been later.

Ques. Do you recollect of attending prayer meeting on the next Thursday after the failure, and do you recollect of hearing other parties talking on that subject, and of your talking to them about it?

Ans. I recollect of a conversation I had with Mrs. Simmons coming home from prayer meeting, on the subject of the failure of the bank and public rumors of Mr. Colby's losses.

T. J. ROBINSON.

Testimony of Z. S. Stocking.

Also, Z. S. STOCKING, of the city of Cleveland, Ohio, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by sol. for comp. State your name, age, place of residence, and occupation.

Ans. Zalman S. Stocking is my name; Cleveland, O., my place of residence; I am 55 years of age; I am engaged in various business.

116 Ques. State whither or not you have a general acquaintance with the citizens of Mansfield, and whether or not you had in the fall of 1873, and still have, property and business interests in Mansfield.

Ans. Yes, I have.

Ques. Were you in Mansfield, O., on the 26th, day of September, 1873,

the day of the failure of 1st Nat. Bank and Hickox; if not, how soon thereafter were you in Mansfield?

Ans. I was here on the failure of the 1st Nat. Bank, and also on the Tuesday of the week following.

Ques. State whether or not there were any reports in circulation in the city of Mansfield, after said failure, as to the financial condition of Hubbard Colby, and the effects of said failure upon him; if so, state how soon after said failure you heard the same; state the nature of the same, and how general and otherwise.

Ans. Three days of the week following the failure of 1st Nat. Bk. I remained in Mansfield, and heard all sorts of rumors upon the subject, the first of which was that Mr. Colby and Hickox had interchanged signatures upon business paper largely, and that the failure of the 1st Nat. Bk, necessitated the failure of both Mr. Hickox and Colby.

Ques. State how general or otherwise the reports of which you have spoken were.

Ans. It seemed quite common with such business men as I happened to converse with.

Ques. Please name the days of the week you have stated that you were in Mansfield during the week following said failure.

117 Ans. I am not positive, but I think I arrived in town on Tuesday evening, or, perhaps, in the afternoon, and remained until the next Friday morning.

Cross-examination:

Ques. Where do you reside now, Mr. Stocking?

Ans. Cleveland.

Ques. How long have you resided in Cleveland?

Ans. About seven years.

Ques. On what day of the month did you come to Mansfield in Sept., 1878?

Ans. It was my custom then, as now, to come to Mansfield on Tuesday; I do not recollect the day of the month.

Ques. Did you ever come to Mansfield on any other day but Tuesday?

Ans. Very rarely; but sometimes.

Ques. Were you here on each Tuesday of the month of September, 1873?

Ans. I am not positive, but I think I came here on each Tuesday of that month.

Ques. How was it in the month of October, 1873?

Ans. I cannot remember positively, but I believe that I came then as now—on Tuesday of each week.

Ques. How long did you remain on your last visit in the month of September, 1873?

Ans. I do not know except as I have answered as to the week after the failure.

Ques. I asked you as to the last visit in September; please answer as to that, if you can?

Ans. I have no special recollection as to the last week in September, unless that was the week following the failure of the First Nat. B'k, but believe I was here three days in that week.

Ques. Where did you go from here when you left in the last week in September, and when did you leave?

118 Ans. Friday of the week following the failure I left Mansfield; I cannot say whether I went directly home to Cleveland or not; I think I did.

Ques. Do you know when the failure occurred?

Ans. I do not remember the date of the month.

Ques. Do you know what day of the week it was on?

Ans. I think it was on Friday, but I am not certain of that.

Ques. What time on Tuesday did you arrive at Mansfield?

Ans. I think it was in the evening; it may have been in the afternoon.

Ques. With whom did you converse on Tuesday after coming to Mansfield?

Ans. I have no recollection of any conversation in particular with any one; but the subject of the panic and the failure were the subject of conversation wherever I went.

Ques. What was your business at Mansfield on that occasion?

Ans. Looking after my business affairs.

Ques. What is that?

Ans. That is fences, farms, houses and lots, unpaid rents, et cetera.

Ques. What part of the business were you engaged in on Tuesday—the day you came here?

Ans. I don't remember.

Ques. On Wednesday?

Ans. I can only remember my general business; nothing special that I can remember.

Ques. What time did you leave Mansfield on Friday?

119 Ans. I presume on the first train to Crestline, as I usually took that train.

Ques. What time a day was that?

Ans. I think it leaves about 9 o'clock a. m.

Ques. Did you make these periodical visits to Mansfield, arriving on each Tuesday and leaving on Friday, during the month of October, 1873?

Ans. Judging from the uniformity of my visits I should think I did; but there may have been exceptions in that month.

Ques. Do you know of any exceptions in that month?

Ans. I do not remember any.

Ques. In these reports, of which you speak, what was said to be the cause of Mr. Colby's being effected by the failure of 1st Nat. Bank and Hickox?

Ans. I have stated that Mr. Colby and Hickox were said to have indorsed largely for each other, and it seemed to be admitted by all that the failure of the bank carried with it both of those gentlemen, Mr. Hickox being understood to be heavily indebted to the bank.

Ques. Did anybody say that Hickox' having indorsed for Colby, Colby's financial condition would be effected thereby?

Ans. I can remember no special conversation or statement of any single person on the subject, but remember only general impression.

Ques. Have you any general impression that you heard Colby would be effected financially by the fact that Hickox had indorsed his paper?

Ans. No such impression but that they interchanged indorsements or indorsed for each other.

Ques. Was not the report that Colby would be effected financially by those failures founded on the fact that he had indorsed for Hickox largely?

120 Ans. I think it was.

Ques. In these reports was it stated to what amount Colby had indorsed for Heckox?

Ans. Yes; variously stated, and I presume wildly enough in large sums, but what amounts they were I have forgotten.

Ques. Did you know that an examination of the affairs of the bank had been made by its officers, whereby the fact became known that Colby had indorsed largely for Hickox?

Ans. I heard of the examination, but remember nothing now of the details of the result.

Ques. Do you know who made that examination?

Ans. I do not.

Ques. Can you state the name or names of the persons from whom you obtained the reports spoken of?

Ans. I cannot.

Ques. If the fact be that the examination of the bank by its officers, by which the fact was ascertained that Colby was liable on a large amount of Hickox paper, was not made until the latter part of the week after the failure of the bank, may it not be that you heard the reports of which you have spoken on the 2d week after the failure, instead of the 1st?

Ans. The excitement that existed on the subject of the failure in the week next after the failure of the 1st Nat. B'k impressed me with the facts of the statement I have made; I have said I remembered no special conversation; I wish to correct this: in one instance, on the

121 Sunday next after the failure of 1st Nat. B'k, I met Oscar Townsend in Cleveland; he had returned from a special visit to Mr. Hickox, and he informed me that the failure of Hickox and the First Nat. Bank were bad failures, and that Mr. Colby must be inevitably ruined by it.

(That part of the answer last made in regard to a conversation with Oscar Townsend, the witness being informed that it was not responsive to the question, before it was written down is objected to by counsel for Mrs. Barbour.)

Ques. Can you name any person or persons from whom you heard the reports in Mansfield which you have stated you heard in Mansfield?

Ans. I could name no person particularly.

Ques. Will you now answer me if the fact that the examination of the bank which disclosed Mr. Colby's liabilities with Hickox took place the latter part of the week after the failure, the reports you have mentioned may not have been heard by you this 2d week after the failure instead of the 1st.

Ans. I answer that I think the report of any bank officers constitute no part of my remembrance of the rumors, opinions, and statements I have referred to, and that I do not remember when the report of the examination of the bank was made or the precise time.

Ques. If it was not known that Colby was liable on Hickox paper before such examination, and that took place the latter part of the 2d week, may you not be mistaken as to the time you heard the reports you have stated?

Ans. My statement of the public rumors and conversation is based on what I heard the week next following the failure of the bank, and can speak of no conclusion resulting from the examination of the bank.

122 Ques. Do you know whether any examination of the bank had been made or not at the time you heard the reports you have spoken of?

Ans. No, sir.

Re-examination:

1st question. For some time prior to and up until the said [illegible] what were the business and social relation' of Hickox and Colby [illegible] being intimate or otherwise, and how, generally, was the character [illegible] that relation known to the community?

Ans. I think they were generally known to be intimate socially and in business relation for some years prior to the failure of the 1st Nat. Bank.

Ques. Do you know how many employees in addition to Hickox and McMan there were in the 1st Nat. Bank at the time of its failure?

Ans. I cannot state positively, but believe there were only two, book-keeper and teller.

Ques. Where was the office of the M. C. and L. M. R. R. with reference to the 1st Nat. Bk prior to and at the time of its failure, and who of the citizens of Mansfield were connected with the R. R. office and were acquainted with its business up to the time of its said failure?

Ans. The location of the R. R. office was in the same building as the bank, on the floor next above it; and Williard S. Hickox, president, N. H. Sturges, assistant treasurer, H. C. Hedges, secretary, J. H. Cook, Hubbard Colby, and others whom I do not recollect, were officers of the railroad.

Ques. Were there any reports in circulation after the said failure as to Mr. Colby and Hickox and others being liable for money bor-
123 rowed in the construction of said railroad; if so, what were the amounts fixed by these reports?

Ans. I remember reports to the effect that all or a portion of the board of directors and officers were liable from forty to sixty thousand dollars for money borrowed for the construction of the road. I, however, got the impression that the executive committee were chiefly liable for the repayment of this money.

Z. S. STOCKING.

Testimony of Emiline Clopp.

Also EMILINE CLOPP, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State your name, age, place of residence, and occupation.

Ans. My name, Emiline Clopp; I am 65 years of age; I reside in Mansfield, Ohio; I am a wine grower by occupation.

Ques. How long have you resided in the city of Mansfield, and have you a general acquaintance therein?

Ans. I have resided here about 24 years, and have a general acquaintance in the city.

Ques. Are acquainted with Allen B. Beverstock; and, if so, how long have you known him?

Ans. I am acquainted with him, and I have known him for almost the length of time I have resided here.

Ques. Do you recollect the date and occasion of the failure of the First Nat. Bank and Williard S. Hickox?

Ans. I do not know the exact date of the failure.

Ques. Were you at home on the day of the failure? if not, when did you return?

Ans. I was not at home on the day of the failure, but returned on the 3d day of October, 1873.

Ques. State if there were any reports in circulation in the city of Mansfield after said failure as to the financial condition of Hub-
124 bard Colby, and the consequences of the failure of said bank and Hickox on him.

Ans. I heard a good many reports concerning it.

Ques. How general were these reports, and the talk about this matter?

Ans. They were quite general, and I suppose from what I could ascertain that they would be damaging to Mr. Colby. I had made up my mind to that effect.

Ques. Please state more fully the nature and character of these reports, and what was said in and circulated by them.

Ans. It was most generally founded upon the opinion that he had indorsed largely for Hickox: that is what I gathered from the conversation I had with different persons.

Ques. Supposing this failure to have occurred on Friday, the 26th day of September, 1873, how soon thereafter would you say you heard the general reports?

Ans. Well, I arrived here on the 3d of October, 1873, and was somewhat interested in the failure of the First Nat. B'k, and I heard them plentifully on the 4th of October, 1873.

Ques. Did you hear them before you returned home, Mr. Clopp?

Ans. I heard reports of the failure of the First National and not much else while I was at Kelley's Island and while on my way from there here.

Ques. Did you hear anything upon the subject of Colby's condition before you reached home?

Ans. I do not think I did.

EMILINE CLOPP.

Testimony of Perkin Bigelow.

Also PERKIN BIGELOW, of the city of Mansfield, Ohio, in said district, of lawful age, being by me first duly sworn, deposes as follows:

125 1st question by solicitor for comp. State your name, age, place of residence, and occupation.

Ans. My name is Perkins Bigelow; I am 55 years of age; I reside in Mansfield, O., and am by occupation druggist.

Ques. How long have you resided in Mansfield, O., and have you a general acquaintance therein?

Ans. I have been here 27 years and know almost everybody.

Ques. Do you remember the date and occasion of the failure of the First. Nat. B'k and Williard S. Hickox?

Ans. I remember the occasion and not the date.

Ques. State whether or not there were any reports in circulation in the city of Mansfield after said failure as to the financial condition of Hubbard Colby, and the effects and consequences of said failure upon him; if so, state the nature and character of the reports.

Ans. Soon after the failure there were reports in circulation that Mr. Colby would be financially effected thereby.

Ques. Supposing said failure to have occurred on Friday, the 26th day of September, 1873, how soon thereafter would you say these reports were circulated?

Ans. I cannot say positively how soon, but I am under the impression that it was on the following week, but cannot say positively that it was that soon.

P. BIGELOW.

Testimony of William Bird.

Also WILLIAM BIRD, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by solicitor for comp. State your name, age, place of residence.

126 Ans. My name is William Bird; I am 65 years of age; I reside in Mansfield.

Ques. How long have you resided in Mansfield, O., and have you a general acquaintance therein?

Ans. I have resided in Mansfield about 8 years, and have a pretty general acquaintance with the people in Mansfield.

Ques. Do you remember the date and occasion of the failure of the First Nat. Bank and Williard S. Hickox?

Ans. I am not positive as to the date; I think it was about 26th or 27th of September, 1873, and remember the occasion.

Ques. State whether or not there were any reports in circulation in the city of Mansfield after said failure as to the financial condition of Hubbard Colby and the effects and consequences of said failure upon him; if so, state fully what said reports were.

Ans. There were reports in regard to the failure of Hickox, and the people were wondering whether it would injure Colby, and I told them that I did not know and I could not say as to that.

Ques. How general was this talk?

Ans. It was talked considerable among the people.

Ques. How soon after the failure did you hear these reports?

Ans. I think it was a very short time, within a very few days after the failure; I heard it talked about before Mr. Clopp returned, or about that time

Ques. In the reports of which you speak was there anything said by the public as to why the said failure would injure Colby, and as to the nature of his liabilities; and if so, what?

127 Ans. It was suggested that he was bail on some railroad matter, a note or bond, I suppose, with Hickox. I do not recollect what it was, but that was what was talked.

WM. BIRD.

Testimony of Henry H. Sturges.

Also, HENRY H. STURGES, of the city of Mansfield, O., in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by solicitor. State your name, age, place of residence, and occupation.

Ans. My name is Henry Sturges; I am 38 years of age; I reside in Cincinnati.

Ques. How long have you resided in Mansfield, and have you a general acquaintance therein, and what was your business in September, 1873?

Ans. I have resided in Mansfield all my life, and have a general ac-

quaintance, and was in September, 1873, in the employ of the M. C. and L. M. Railroad.

Ques. Where was your place of doing business there with reference to the First Nat. B'k?

Ans. It was right over the bank.

Ques. What connection had the president of said bank and Hubbard Colby with said railroad, and what office did they hold therein?

Ans. Mr. Williard S. Hickox was president and Colby was director of said road.

Ques. Were there any notes and obligations existing on the 26th day of September, 1873, on which Williard S. Hickox and Hubbard Colby were liable as makers, given on account of said railroad?

Ans. Yes, sir.

Ques. As far as you can remember, state all the persons in the city of Mansfield who had knowledge of the existence, tenor, and amount of said notes or obligations.

128 Ans. Joseph Hedges, Henry C. Hedges, L. B. Watson, H. Colby, H. S. Hickox, J. H. Cook, B. Burns, and myself. There was a general knowledge, but the exact amount was probably not known. There was a general knowledge among the citizens that we were indorsers, but it was not known to what amount.

Ques. On the 1st day of October, 1873, about how much was Mr. Colby individually or jointly liable for on account of the said railroad, and how evidenced and what portion thereof was due, if any?

Ans. The amount would not vary much from fifty-one thousand ($51,000). It was evidenced by promissory and judgment notes. I should think at that time there was from $10,000 to $20,000 due.

Ques. What were these notes given for?

Ans. It was given for money borrowed for the railroad company.

Ques. On what portion of that was Colby jointly liable with Hickox, if any?

Ans. He was jointly liable with him on the whole of it.

Ques. Were there any reports in circulation in the city of Mansfield after said failure as to Colby's financial condition and the consequences of the failure *of the of the failure* of Hickox and 1st Nat. Bank on him; if so, what was the nature and character of said reports?

Ans. Yes; there were such reports that Mr. Colby had been a heavy indorser for Hickox, and I made several enquiries as to the amount, and the reply was that he was indorser for a large amount. I was told

129 that Mr. Colby said that he did not know to what amount he had indorsed for Hickox.

Ques. How general or otherwise were these reports?

Ans. They were very general.

Ques. How soon were these reports in circulation after the failure on the 26th of September, 1873?

Ans. I do not remember the date of the failure of the bank, but it was soon after the failure of the bank.

Ques. Supposing the failure to have occurred on Friday, the 26th of September, 1873, how soon thereafter, would you say, these reports were in circulation?

Ans. Within from two to four days.

Cross-examination:

1st ques. Was the fact that Colby was indorser for Hickox the foundation of the reports that he would be effected financially by the failure referred to in your examination in chief?

Ans. Yes, sir.

Ques. Was the fact that he was such in lorser for Hickox disclosed to the public through the examination made in the affairs of said bank after its failure by its officers?

Ans. I do not know that the report came from the examination of the officers of the bank, but I know that it was a general report on the street.

Ques. Can you say positively that any such report was in circulation prior to such examination and report of the affairs of the bank?

Ans. I do not know the date when the affairs of the First Nat. Bank were enquired into.

Ques. Do you know how the amount of Colby's liability on Hickox's paper was made public?

Ans. I do not.

Ques. Do you know when it was made public, or by what means?

Ans. I do not.

130 Ques. If it was made public through the examination mentioned, and that was not made public for a week or ten days after the failure of the bank, may you not be mistaken as to the time when you heard the report?

Ans. I think not.

Ques. Of whom did you hear the report that Colby was liable on Hickox' paper to a large amount?

Ans. I cannot mention any names now. I have not thought of it from that time until this.

Ques. What amount did you hear that Colby was liable for on Hickox' paper the first time you heard the report?

Ans. No amount, only that it was large.

Ques. Can you give the day of the week when you first heard the report you have mentioned?

Ans. I cannot.

Ques. What relation did you sustain to the M. C. and L. M. Railroad?

Ans. I was assistant treasurer.

Ques. Who was the principal debtor on this paper which you have mentioned Colby was liable on with others.

Ans. It was divided. There was $40,000 that there was four of us on—Colby, Hickox, Cook, and myself. Then there was $10,000 that had the additional name of Bunn on, making total of $50,000. M. C. & L. M. Railroad was the principal debtor.

Ques. The signers you have mentioned on these papers were sureties, were they?

Ans. They were principals.

Ques. These notes, you say, were given for borrowed money?

131 Ans. Yes, sir.

Ques. Who got the money?

Ans. Railroad company.

Ques. Had not the R. R. Co. placed in your hands as some officer of the road—as treasurer or otherwise—notes, bonds, obligations, property, stocks, and subscriptions, and other valuables, or collaterals to indemnify the signers of these notes against liability or loss on account of having signed said notes?

Ans. It was an assignment made to all the indorsers for the money advanced, and not left particularly in my hands.

Ques. Please state what was assigned for that purpose.

Ans. The entire subscription and the land belonging to the company.

Ques. Was this considered at the time of the failure mentioned as ample security to indemnify the signers of these notes against loss on account of said notes?

Ans. I did until the last of August, 1873. I then thought that we might fall a little short, owing to the stopping of the Pennsylvania Co. ironing. I knew that would stop the payment of subscriptions, especially at Mansfield.

Ques. Are those securities not now ample to indemnify the signers against loss on those notes?

Ans. Not including the Mansfield subscription, they are not sufficient.

Ques. Does including the Mansfield subscription lessen the indemnity?

Ans. Including the Mansfield subscription strengthens it.

Ques. Taking all the securities that are available, and can be made so, are they not sufficient to indemnify the makers of these notes?

132 Ans. If the Pennsylvania Company would complete ironing the road and place the machine-shops here I think it would be; the longer the subscription stood it became less valuable.

Ques. How much has been collected on these collaterals and applied on these notes?

Ans. Twelve or thirteen thousand.

Ques. How much will they fall short of a full indemnity?

Ans. I have not gone over or figured up the good subscriptions for the last nine months, and cannot tell.

Ques. Please state your best judgment, from all the information you have, how it will fall short of a full indemnity.

Ans. If the Pennsylvania Company do not iron and build shops here it may fall short $20,000.

Ques. Is there an obligation on the part of the Penn. Co. to complete the ironing and build the shops?

Ans. Yes, sir; if the M. C. and L. M. R. R. grade, build, and tie the road ready for ironing.

Ques. How much grading, bridging, and tieing in value remains to be done?

Ans. By an accurate estimate made here two years ago, deducting the amount of money spent on the road since, $25,000 or $30,000 ought to complete the road to the State line. The president reported that $25,000 would complete the Michigan end of it.

Ques. Is this railroad company solvent or insolvent?

Ans. That I can hardly answer. There is a suit pending that I do not know the result of. I believe the company to be solvent.

Ques. Are the company operating the railroad? If so, how
133 much of it?

Ans. The road is leased to the Pennsylvania Co., and they are operating it for our company. They are running cars on about forty miles in Ohio and about 65 miles of iron down, and running on about 12 miles in Mich., and about 30 or 35 miles down in Mich.

Ques. Have you not said recently that you and the other signers on these notes would not loose anything by reason of the notes?

Ans. I have made this statement: that I did not think that the signers on these notes would loose anything; if they did, it would be very little.

Ques. On the 1st day of October, 1873, and for several days succeeding thereto, were the signers of these notes, except Hickox, considered each responsible for the amount of liability of each on these notes?

Ans. I cannot state what public opinion was; I can only give my own.

Ques. You were considered responsible for your portion of the notes at that time, were you?

Ans. I had already taken up more than my share of the paper.

Ques. You were at that time able to take up your proportion of the paper which was outstanding.

Ans. Yes, sir.

Q. Mr. Cook was considered responsible at that time for his share?

Ans. Yes, sir.

Q. Mr. Bunn at that time responsible?

Ans. Mr. Bunn I considered seriously crippled for endorsing for McVay, Attiner and Co., and matters were a little doubtful about his being able to take care of his shares.

134 Ques. What real estate is still on hand that was assigned as collateral security on these notes by the railroad company?

Ans. There is ten acres in the city of Mansfield.

Ques. Is that all?

Ans. Yes, sir.

Ques. Was that all that was assigned?

Ans. No, sir.

Q. What has been done with the other?

Ans. It has been sold and the proceeds applied upon the payment of these notes.

Ques. How much has been realized out of it?

Ans. I think about $7,500.

Q. What is the portion remaining unsold worth?

Ans. Present value about $2,000, prospective about $8,000.

Ques. Have you said to any one that you did not know of Colby's liability on Hickox's paper, not including these railroad notes, until two or three weeks after the failure?

Ans. I never said I did not know, but I often inquired, for I did not know.

Ques. What relation are you to the plaintiff in this case?

Ans. I am his brother.

Re examination:

1st ques. In your answer next to the last on cros'-examination, please explain as to whether you did not know of personally the amount of said indebtedness of Hickox, or had not heard of it by rumor or otherwise.

(Objected to solicitor for Mrs. Barbour as leading.)

135 Ans. Within two or three weeks I heard several statements as to the amount of the indebtedness.

Ques. But how soon did you hear public rumors, if at all, without learning amounts, after said failure, as to Mr. Colby's being liable on account of Hickox?

Ans. Within a very few days.

Q. Do you know whether or not Mr. Colby was liable to the said railroad on subscription to capital stock or otherwise on the 1st day of October, 1873; if so, in what amount?

Ans. I believe there was a difference of opinion as to whether he was liable or not; among the board I thought he was liable to the amount of $5,000.

Q. What was the amount of his subscription, and did he ever pay any of the same either in money or property?

Ans. His subscription was $10,000; he paid in two checks of $2,500 each, which I got the cash on, making $5,000.

Ques. About how much is the unpaid subscription of Mansfield?

Ans. $46,000.

Ques. Why has it not been collected?

Ans. It has not been collected because the stockholders are waiting for the shops to be built here, and the Penn. Co. are waiting for the M. C. and L. M. Co. to complete their part of the contract.

Ques. Did the M. C. and L. M. Co. sign any of the notes that you have mentioned that yourself and others signed?

Ans. No, sir.

2d cross-examination:

Ques. Was the stock subscribed by Mr. Colby to the railroad on the same condition as the other stock in Mansfield?

Ans. When the road was first started the subscription books were opened on some legal paper, and all the large subscriptions were made on that, and I do not know whether the terms on that are the same as the printed ones or not.

136 Ques. Has not the railroad co. issued certificates of stock to Mr. Colby to the amount of the stock subscribed by him by the action of the board of directors while you were a member of it?

Ans. At the time stock was issued a meeting of the board of directors was not called and they were not all present; I believe only the executive committee. Henry C. Hedges and W. S. Hickox issued the certificate to Colby.

Ques. The certificate of stock to the amount of Mr. Colby's subscription has been issued to him, has it not?

Ans. Yes, sir.

Ques. At the same time and under the same circumstances were not certificates issued to others, including yourself?

Ans. No, sir.

Q. To no one else but Mr. Colby at that time?

Ans. There were other certificates issued.

Ques. To whom and for what amount?

Ans. To B. B. McVay, about $3,000; that is all I know of.

H. H. STURGES.

Testimony of W. S. Bradford.

Also W. S. BRADFORD, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for comp. State your name, age, place of residence, and occupation.

Ans. My name is Walter S. Bradford; I am 40 years old; I reside in Mansfield, O., and clerk of court of common pleas.

Ques. In what capacity were you acting in in September and October, 1873?

Ans. I was an insurance and real estate agent.

Ques. How long have you lived in Mansfield, and had you a general acquaintance therein in October, 1873.

137 Ans. I have resided here for 16 years, and had a general acquaintance in October, 1873.

Ques. Were there any reports in circulation in the city of Mansfield after said failure as to the financial condition of Hubbard Colby and the consequences of said failure upon him; if so, what were the character of said reports, and how soon circulated after said failure?

Ans. There were such reports in circulation shortly after the failure of 1st Nat. Bank; character of them was that the failure of Hickox would very seriously effect Colby financially, as he was said to be an indorser for Hickox to large amounts.

Ques. How general were these reports and talks?

Ans. I heard a good deal said about it by many people; Colby being a prominent man, it was general talk.

Ques. Suppose the failure of 1st Nat. B'k and Williard S. Hickox to have occurred on Friday, 26th day of September, 1873, how soon thereafter would you say these reports were put in circulation?

Ans. I should think within two or three days; I do not know but sooner.

Cross-examination:

1st ques. You say it was said that Colby would be effected by the failure on account of being liable as indorser for Hickox, do you?

Ans. No. I said it was thought that he would be seriously effected, financially, by the failure of Hickox.

Q. How was it said that the failure of Hickox would effect Colby financially?

Ans. No one talked to me that claimed to know positively about the matter, but people wit. whom I talked believed that to be the fact.

Ques. Believed what to be the fact?

Ans. That Mr. Colby had indorsed largely for Mr. Hickox.

Ques. When did you first hear it said that Colby had indorsed
138 for Hickox, and on that account would be financially effected by the failure of Hickox?

Ans. I think it was within two or three days after the failure of the 1st Nat. Bank.

Ques. What day of the week was it on that you heard it?

Ans. I am not positive; it was either Saturday, Sunday, or Monday. As I said before, I can not be positive as to the time, but I know I heard it shortly after the failure. I think heard it talked about on each of these days a great deal.

Ques. What time in the day did the failure of the bank take place?

Ans. I do not remember the exact hour. If my memory serves me right, it was between the hours of eleven and twelve o'clock.

Ques. Which part of the day, in the forenoon or afternoon?

Ans. A. M.

Ques. Is your memory any more accurate as to the time you heard the reports you mentioned in your examination-in-chief than it is to the time of the failure of the bank?

Ans. Yes, sir, it is.

Ques. Why is it more accurate?

Ans. Well, sir, from the nature of the thing it is something that I would be more likely to remember.

Ques. What interest had you more in the financial condition of Colby than that you had in the bank?

Ans. Personally I had no interest in the financial condition of Colby,
not one cent, to my knowledge. Mr. Smith and myself, as a firm,
139 deposited in the bank, but the bank having failed, it did not make any difference to us as to what hour in the day it failed, and therefore did not fix it in my memory.

Ques. What Smith was your partner?

Ans. E. W. Smith.

Ques. Is he an insurance and real estate agent in Mansfield?

Ans. He is.

Ques. Can you name the person from whom you first heard the report that Colby would be financially effected by the failure of Hickox?

Ans. No, sir.

Ques. Can you name the person from whom you heard it after the first time?

Ans. No. I remember the names of several individuals that talked

to me on that subject, but just what any one of them said I do not remember.

Ques. On what subject do you mean; the subject of the failure?

Ans. I mean that in connection with Mr. Colby's connection with Hickox financially, as an indorser.

Ques. Can you name the person who told you that Colby was an indorser for Hickox?

Ans. No, sir, I cannot, for no person ever told me that at that time; but those that talked of it repeated it on the general rumor or report.

Ques. How long after that until you were told the fact he was an indorser for Hickox?

Ans. I cannot say. I do not know that I was ever told by anybody that claimed to know positively; but I have often since that time heard it repeated in the presence of several individuals, and never heard it disputed, and therefore believed it myself.

Ques. How long after that time?

Ans. Often after that—every day. I do not think there was a day but what I heard it, and several times a day for some weeks.

140 Ques. Did you learn how the fact that Colbys was an indorser on Hickox' paper was made known publicly?

Ans. No.

Ques. Did you learn that it was disclosed by an examination into the affairs of the bank by its officers and stockholders, made after the failure of the bank?

Ans. I cannot say that I did, and I cannot say that I did not hear such a report.

Ques. Did you learn the extent of his liability on Hickox's paper by these reports?

Ans. I heard the sum of $60,000 mentioned several times, and that is the only amount I did hear.

Ques. Where did you hear these reports?

Ans. I heard it in my office, on the street, and everywhere I went. It was talked about more than any other subject or all other subjects put together.

Ques. What was talked about?

Ans. Failure and probable failure of our prominent men here.

Ques. These talks and reports, then, were not confined to the financial condition of Hubbard Colby?

Ans. They pointed to him more particularly at that time than any other one (I mean by "at that time" immediately after the failure), excepting the large stockholders of that bank.

W. S. BRADFORD.

Testimony of John Harvey.

Also JOHN HARVEY, of the city of Mansfield, O., in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for comp. State your name, age, place of residence.

Ans. My name is John Harvey; I am 65 years of age; I reside in Mansfield, O.

141 Ques. How long have you resided in the city of Mansfield?

Ans. 27 years.

Ques. How long have you known Hubbard Colby?

Ans. I have known Mr. Colby about 27 years.

Ques. Was Hubbard Colby indebted to you on the first day of October, 1873; if so, for what, and how much?

Ans. Mr. Colby was indebted to me at that time in the sum of $10,000 and back interest for U. S. Government bonds.

Ques. Has that claim ever been paid?

Ans. No, sir.

Ques. Do you *the* remember the occasion and date of the failure of 1st Nat. Bank and Williard S. Wilcox?

Ans. Yes, sir; I have a recollection of it.

Ques. State whether or not you had a conversation with Hubbard Colby after the said failure as to his financial condition; if so, how soon after, and what did he say?

Ans. I had a conversation with Mr. Colby a few days after the failure. He stated to me that if he was not out so much on Mr. Hickox's paper he could pay everybody. I asked him if the amount he named was all that he was on his paper; he said he thought it was, but he had not kept a minute of it.

Ques. What amount did he name that he was on, if any?

Ans. $30,000 or 35,000; but he had not kept any minute, and he did not know exactly how much he was on.

Ques. How soon after the said failure did this conversation occur?

Ans. I think it was on the following week; early in that week.

Ques. State whether or not there were any reports in circulation in the city of Mansfield, after said failure, as to the financial condition of Hubbard Colby, and the effects and consequences of said failure on him; if so, what was the character of these reports?

142 Ans. There was reports all over the town that the failure of Hickox would effect Colby, on account of their being connected with the Coldwater Railroad.

Ques. How soon after the failure were these reports in circulation?

Ans. To the best of my recollection, in the fore part of the following week.

JOHN HARVEY.

Testimony of George A. Clugston.

Also, GEORGE A. CLUGSTON, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st question by solicitor for complainant. State, if you please, your name, age, place of residence, and occupation.

Ans. My name is Geo. A. Clugston; I am 32 years of age; I reside in Mansfield, O. I am cashier of the Farmers' National Bank of Mansfield, O.

Ques. What was your occupation in September and October, 1873?

Ans. In September, and to the 2d of October, I was an attorney-at-law.

Ques. State whether or not you drafted a mortgage from Hubbard Colby and wife to Mrs. Melissa A. Barbour, in the fall of 1873; if so, at what time?

Ans. I think not.

Ques. Did you, as a notary public, take the acknowledgement of such a mortgage?

Ans. I did.

Ques. When and by whom was you first spoken to on that subject?

Ans. On the day of the date of the acknowledgement by Mr. Colby.

Ques. Do you know who drafted the mortgage?

143 Ans. No.

Ques. Who else was present when Mr. Colby first spoke to you about it?

Ans. No one that I recollect of.

Ques. Was Mr. A. K. Dunn in Mansfield on the day of the date of that acknowledgement, to your knowledge?

Ans. He was.

Ques. Where did you take the acknowledgement, and who was present?

Ans. At Mr. Colby's residence. No one but the mortgagors and the witnesses. My recollection is, that Mr. Dunn and I were the witnesses.

Ques. What did you do with the mortgage after the acknowledgement thereof?

Ans. I think I left it at the recorder's office for record.

Ques. At whose request did you leave it at the recorder's office.

Ans. Mr. Colby's.

Ques. Did Mrs. Barbour ever say anything to you about getting the mortgage?

Ans. No, sir.

Ques. Who paid the recorder's fee?

Ans. I don't remember.

Ques. Did Mrs. Barbour ever say anything to you on the subject of this mortgage?

Ans. I think not; never previous to its execution or record. I do not know that she ever spoke to me about it; if she did, it was a considerable time after that.

Ques. State whether or not you either drafted or took the acknowledgement of a mortgage from Hubbard Colby and wife to Allen B. Beverstock?

Ans. I took the acknowledgement only.

Ques. When, and by whom, was you first spoken to on that subject?

Ans. On the day of the date of the acknowledgement and by

144 Mr. Colby.

Ques. Did Mr. Beverstock ever speak to you on that subject?

Ans. Never, previous to the acknowledgement.

Ques. Was he in the city of Mansfield on the day of the acknowledgement, to your knowledge?

Ans. I think he was.

Ques. What did you do with the mortgage after taking the acknowledgement.

Ans. I think Mr. Colby retained it.

GEO. A. CLUGSTON.

Testimony of Charles A. Demaeyer.

Also, CHARLES A. DAEMAEYER, of the city of Mansfield, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by sol. for comp. State your name, age, place of residence & occupation.

Ans. My name is Charles A. Daemaeyer. I am 32 years of age. I reside in Mansfield, O. I am agent of the Adams and American Express Co's.

Ques. How long have you resided in the city of Mansfield?

Ans. A little over 3 years.

Ques. Do you recollect the occasion of the failure of 1st Nat. B'k and Williard S. Heckox?

Ans. I do.

Ques. After said failure, state whether or not there were any reports in circulation in the city of Mansfield as to the financial condition of Hubbard Colby, and the effects and consequences of said failure upon him.

Ans. The reports, or rather the general talk, was that Mr. Colby would very likely be effected by the failure of the 1st Nat. B'k, because it was supposed that Mr. Colby was on Mr. Hickox's paper, and otherwise interested in the affairs of the bank.

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Ques. Supposing this failure to have occurred on Friday, the 26th day of September, 1873, how soon thereafter would you say that these reports of which you speak were in general circulation, if at all?

Ans. I should say, on the same day and the following day.

Ques. How general, or otherwise, were these reports?

Ans. I think it was the general talk among all business men.

Cross-examination:

1st ques. by sol. for Mrs. Barbour. Who did you hear speak of these reports on the day of the failure?

Ans. I cannot remember any one in particular.

Ques. Do you know when the bank failed?

Ans. Yes, sir.

Ques. When?

Ans. I do not know the day of the week, but I think it was on the 26th day of September, 1873.

Ques. What time in the day was it?

Ans. It was about two o'clock, I should judge.

Ques. In the forenoon or afternoon?

Ans. P. m.

Ques. Where were you at that time?

Ans. I had just left the bank.

Ques. Who did you hear speak in regard to the effect the failure of bank would have on Colby's financial condition?

Ans. I think Mr. Henry Sturges.

Ques. How did he say the failure of the bank would effect Colby's finances?

Ans. He spoke about Mr. Colby being on Mr. Hickox's paper, and Mr. Hickox's being on Mr. Colby's paper. I do not know that he said any more than that I have stated.

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Ques. Was it the paper connected with the M. C. and L. M. R. R. that he spoke of?

Ans. That I cannot answer.

Ques. Did you hear what paper it was that Colby was on for Hickox?

Ans. I did not.

Ques. Did you hear what amount it was?

Ans. I did not.

Ques. Where did you hear these reports?

Ans. In my office and in other places of business.

Ques. Was the reason why Colby would be effected financially by the failure said to be the fact that he was largely on the paper of Hickox?

Ans. I think that was the principal reason.

CHAS. A. DEMAEYER.

Testimony of Harvey Hall.

Also HARVEY HALL, of the county of Richland, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by solicitor for comp. State your name, age, place of residence, and occupation.

Ans. My name is Harvey Hall; I am 55 years of age; I reside in Madim T'p, Richland Co., Ohio; I am a farmer by occupation.

Ques. During what time of your life have you resided in the city of Mansfield, and where have you resided since that, and what has been the extent of your acquaintance in and around Mansfield?

Ans. I resided in Mansfield from 1843 to 1866 or '7, and from that time I have resided in Madison T'p, near Mansfield, and have been pretty well acquainted here in Mansfield.

147 Ques. What business interests had you in Mansfield in September and October, 1873?

Ans. I had an interest in the Mansfield Banking Company.

Ques. How long have you been acquainted with Hubbard Colby?

Ans. From 20 to 25 years; it may be longer or shorter; cannot state positive.

Ques. State whether or not he was indebted to you on the 1st day of October, 1873; if so, in what amount, for what, and how evidenced.

Ans. He was indebted to me to the amount of about $5,000 (five thousand dollars); it was for U. S. bonds, and a promissory note evidenced the debt.

Ques. When did that fall due, if you recollect?

Ans. The note was on demand.

Ques. Do you recollect the occasion of the failures of the First National B'k and Williard S. Hickox?

Ans. I recollect that it failed.

Ques. Were you in Mansfield on the day of the failure; if not, how soon thereafter?

Ans. I think I was not; I think I was here on Monday following.

Ques. State whether or not there were any reports in circulation in the city of Mansfield after said failure, as to the effect and consequences of said failure upon Colby, and his financial condition.

Ans. I think there was.

Ques. State the nature and purport of the reports.

Ans. It was reported that it would effect Mr. Colby, as he was interested there, and some said that it would take him with Hickox and the bank.

Ques. Supposing said failure to have occurred on Friday, the 26th day of September, 1873, how soon thereafter would you say these reports were in circulation?

148 Ans. On the following Monday; the day on which I was in town.

Ques. State whether or not you heard these reports on the streets, and how general, or otherwise, the same were.

Ans. I think I did not hear them on the street, as I was on the street but very little that day; I cannot say how general they were.

HARVEY HALL.

Testimony of Alexander Morrow.

Also ALEXANDER MORROW, of the city of Mansfield, Ohio, in said district, of lawful age, being by me first duly sworn, deposes as follows:

1st ques. by solicitor for comp. State your name, age, place of residence, and occupation.

Ans. My name is Alexander Morrow; I am 48 years of age; I reside in Mansfield, Ohio; I am post-office clerk by occupation.

Ques. How long have you lived in and around Mansfield?

Ans. I was born here; three years in all that I have been away from here.

Ques. Do you remember the occurrence of the failure of the 1st Nat. B'k and Williard Hickox?

Ans. I do.

Ques. State whether or not there were any reports in circulation in the city of Mansfield after said failure as to the financial condition of Hubbard Colby, and the effect of the failure of said bank and Hickox upon him.

Ans. There were such reports, but as to whether it was before or after the said failure I could not say; it was about that time; I think it was before.

149 Ques. What was the character of these reports?

Ans. They were that if Colby failed it would involve Mr. Davis.

Ques. Were there any reports as to the financial condition of Colby after Hickox and the First Nat. Bank had failed?

Ans. Yes, sir.

Ques. What were these reports?

Ans. That he would not be able to meet his liabilities, and that it would involve others.

Ques. Supposing the failure to have occurred on Friday, 26th of September, 1873, how soon thereafter would you say you heard these reports?

Ans. My recollection as to that is not very distinct, as there were rumors both before and after the failure as to the consequences of his failure. I cannot recollect any distinct or particular conversation after the failure. The most distinct recollection I have of any talk was before the failure, as to the consequences if he did fail.

Ques. What failure have you reference to?

Ans. Mr. Colby's.

Ques. Did you hear any reports as to Colby's financial condition, and as to the consequences of Hickox's and 1st Nat. Bank's failure on him, after the day that Heckox and the bank did fail?

Ans. Yes, sir.

Ques. Now, is there reports which you say occurred after the failure of Hickox and the bank, what, if anything, was said about Colby's prospect, and what, if anything, the effect of the failure of Hickox and the bank would be upon Colby?

Ans. It was reported that he would not be able to meet his liabilities.

Ques. Now, if the failure of Heckox and the bank occurred on Friday, 26th of September, 1873, how soon thereafter did you hear the report you have last named?

150 Ans. I could not state exactly how long it was after that failure; it may have been ten days or two weeks, or it might have been three weeks after the failure.

Ques. About when did you hear the first report that Colby would not be able to meet his liabilities, as you have stated?

Ans. It was after the failure of the bank; how long, I could not tell the exact time.

Ques. Is there any conversation, circumstance, or event that enables you to fix the time of the reports?

Ans. I had a conversation with a gentleman interested, and he said that if Mr. Colby failed he would loose all he had; the time after the failure, I cannot fix.

Ques. In that conversation was anything said about a mortgage being given for security.

Ans. No, sir; he did not say anything how he would loose at that time.

Ques. Did you have a conversation with a person after that on the same subject matter? If so, what was said?

(Objected to by solicitor for Mrs. Barbour.)

Ans. Well, he said that he was bail for Mr. Colby for Mrs. Barbour, and that if he had it to pay he would have nothing left.

Ques. Was there anything said about a mortgage in any of these conversations? If so, which, and what was said?

Ans. I have no recollection of anything being said about a mortgage.

ALEX. MORROW.

Testimony of Melissa A. Barbour.

MELISSA A. BARBOUR, of Mansfield, Ohio, being first duly sworn by me, deposes as follows:

151 1st ques. by A. K. Dunn, esq. Are you one of the defendants to this suit?

Ans. I am.

2d q. State what relation you sustained to Justice S. Barbour in his lifetime, and now sustain,

Ans. He was my husband, and I am now his widow.

3d qu. How long has he been dead, and where have you resided since?

Ans. He has been dead nine years, and I have resided in Mansfield, Ohio.

4th qu. How many children did he leave, and what are their names?

Ans. Three, Maggie, May, and Justice L.

5th qu. Who was administrator on his estate?

Ans. Hubbard Colby.

6th qu. Who was guardian of his children on Oct. 1st, 1873?

Ans. I was.

7th qu. State whether you are still guardian of the property of Maggie Barbour and May Barbour.

Ans. I am not.

8th qu. When did you cease to be guardian of their property?

Ans. January, 1874.

9th qu. How many of the children are now living?

Ans. Two—Maggie and May; Justus is dead.

10th qu. State whether or not you received a notice from the probate judge of Richland Co. in the summer or fall of 1873, in relation to the guardianship of your children?

(Objected to by pl'ffs' counsel.)

Ans. I did.

11th qu. Are these the notices now exhibited to you which you received?

Ans. They are, and are marked for identification A and B, Henry C. Hedges, Register, Dec. 23d, 1874.

12th qu. What did you do with these notices when you re-

152 ceived them?

Ans. Gave them to Mr. Hubbard Colby.

13th qu. How soon after you received them did you hand them to Mr. Colby?

Ans. Same day.

14th qu. State what knowledge or information, if any, you had of Hubbard Colby's indebtedness on Oct. 1st, 1873, or prior to that.

Ans. I knew nothing at all about it.

15th qu. State whether or not you had heard any reports on Oct. 1st, 1873, or prior to that time, unfavorable to the financial condition of Hubbard Colby.

(Objected to by complainants' counsel, because the same is leading.)

Ans. I had not.

16th qu. What was your estimate of the value of Hubbard Colby's property, or what he was worth on Oct., 1873, and for some time prior to that time?

Ans. $250,000 or $300,000.

17th qu. How long after Oct. 1st, 1873, did you hear reports unfavorable to his financial condition? When did you first hear after Oct. 1st, 1873?

Ans. Several weeks.

A.—*Henry C. Hedges, Register, Dec. 23d, 1874.*

OFFICE OF PROBATE JUDGE, MANSFIELD, OHIO,
June 11, *A. D.* 1873.

Mrs. M. BARBOUR, *guardian of* Amy *Barbour, Maggie Barbour, and Justus L. Barbour:*

A request has this day been filed in the probate court, asking that you file a final account of your guardianship, showing fully all receipts and expenditures, and also showing the amounts of the distributive shares of said minors from the estate of J. S. Barbour, dec'd, and
153 whether the estate of said wards is invested according to law.

Also you are requested at the same time to file a new bond as said guardian, Andrew S. Newman, one of your bondsmen, being now deceased.

Hoping you will attend to this immediately and save the costs of citation, I remain yours, &c.,

H. D. KEITH,
Probate Judge.

B.—*Henry C. Hedges, Register.*

OFFICE OF PROBATE JUDGE, MANSFIELD, OHIO,
Sept. 29, *A. D.* 1873.

Mrs. MELISSA BARBOUR:

The law requires that upon a guardian filing a new bond, at the same time a settlement of the estate of his wards should be filed. You filed a new bond in June last, but have neglected to file your settlement of the same date. Please file it at once, to-day or to-morrow, and save the additional costs of citation.

Yours, &c.,

H. D. KEITH, *Probate Judge.*

P. S.—I send you this by the hands of my deputy to save time.—H. D. K.

Cross-examination:

1st qu. by L. B. Matson, esq. How soon after the death of your husband was Mr. Colby appointed administrator of his estate?

Ans. Right away.

2d qu. Where did your husband die and where was his property and assets?

Ans. He died in Canandagua, New York, and his property was in Mr. Colby's hands.

3d qu. Was it in Mr. Colby's hands prior to his death; if so, when did it pass into Mr. Colby's hands?

Ans. It was on his hands prior to his death, but I don't know when it passed into his hands.

4th qu. State as near as you can about how long it was prior to his death.

154 Ans. It must have been in 1864; and he died in November, 1865.

5th qu. Of what estate did his property consist, real or personal, and, if both, how much of each?

Ans. He had no real estate; don't know the amount of his personal estate.

6th qu. Where were his assets, as a matter of fact, at the time of his death, so far as you know, and of what did they consist?

Ans. In Mr. Colby's hands. I do not know of what they consisted.

7th qu. Did Mr. Colby, at any time after his appointment, state to you of what the estate consisted—the amount thereof? If so, state what he said.

Ans. Don't remember that he did.

8th qu. Did you never enquire of him what your husband left for you?

Ans. No, sir.

9th qu. Had you no information from any source?

Ans. No, sir.

10th qu. About what did you learn was the value of your husband's estate?

Ans. About $40,000.

11th qu. What amount of that have you since invested in real estate which you now own?

Ans. $8,000—or about that sum.

12th qu. Did Mr. Colby at any time state to you the condition of your husband's personal estate in his hands and how it was invested; if so, what did he state?

Ans. He did not.

13th qu. Did you never give any personal attention to it; if you did, what?

155 Ans. I did not. Always had confidence in him.

14th qu. How much has he paid you, as an individual and as guardian and when?

Ans. I do not know.

15th qu. Have you not some idea of any amount he has paid?

Ans. I have not.

16th qu. Can't you name any amount, at any time?

Ans. No, sir.

17th qu. About what is the aggregate amount he has paid you?

Ans. I do not know.

18th qu. Did you give receipts for the sums he has paid you?

Ans. No, sir.

19th qu. What is your idea of the amount you have received from him?

Ans. I have not the least idea.

20th qu. Was it $10,000 or $5,000, more or less?

Ans. I can't tell.

21st qu. You say in an answer in your examination in chief you received the notices in the summer or fall, 1873; did you receive them at the time of these respective dates?

Ans. I did.

22d qu. Who caused them to be issued?

Ans. I do not know.

23d qu. Had any person talked to you about the condition of Colby's acct. as adm'r of your husband, or your acct. as guardian, before these notices were issued; if so, when, and who?

Ans. No one that I remember of.

24th qu. Had nothing been said to you on the subject?

Ans. No, sir.

25th qu. Did you ever talk to the probate judge on the subject?

Ans. No, sir.

156 26th qu. How much did Mr. Colby, as adm'r, owe you individually, on Oct 1st, 1873?

Ans. I don't know.

27th qu. What was in his hands belonging to you as guardian of your children at that date?

Ans. I do not know.

28th qu. How did you find out the amount due you at that time?

Ans. I cannot tell how.

29th qu. Did any body tell you; if so, who?

Ans. No, sir.

30th qu. When was the mortgage in controversy drawn up?

Ans. Some time about Oct. 1, 1873; the dates will show.

31st qu. Who first spoke to you about a mortgage; when and where, and in whose presence?

Ans. Mr. Dunn, I think, at my house; can't say just when; some time about Oct. 1st, 1873; no one else was present that I remember of.

32d qu. What relation is Mr. Dunn to you, and in what capacity was he acting when talking to you, att'y. or ag't?

Ans. He is my brother-in-law. Don't know as I can say in what capacity he was acting. Don't remember.

33d qu. He was living at Mt. Gilead at the time; how did he happen to be in Mansfield?

Ans. Don't know.

34th qu. Do you know who sent for him?

Ans. I do not.

35th qu. How long had he been in and around Mansfield; how many days prior to that talk about the mortgage?

Ans. Don't know.

36th qu. About how long?

157 Ans. I am not able to say.

37th qu. What day of the week was that?

Ans. That I don't know.

38th qu. Had he not been in Mansfield two or three days before that?

Ans. I can't say how long he had been here.

39th qu. Did he speak to you before or after you had learned the mortgage had been made?

Ans. After.

40th qu. That was the first you learned of it?

Ans. Yes, sir.

41st qu. How do you know it was after?

Ans. I do not know.

42d qu. Did ever Mr. Colby say anything to you about the mortgage upon its execution?

Ans. He did not.

43d qu. Do you feel sure in saying that Mr. Dunn first talked to you about it after it was executed?

Ans. Yes, sir.

44th qu. Did ever Mr. Colby talk to you about the mortgage; if so, when did he first speak of it?

Ans. Do not think he did.

45th qu. When Mr. Dunn first spoke to you about it who introduced the conversation on that subject?

Ans. I do not remember.

46th qu. When, if ever, did you first see the mortgage?

Ans. Never saw it.

47th qu. When did you first ask for the mortgage to be given, and of whom?

Ans. I never asked for one.

48th qu. What did Mr. Dunn say to you and you to him when he told you about the mortgage after its execution?

Ans. I do not remember.

49th qu. Can't you remember anything that either of you said?

158 Ans. No, sir.

50th qu. Give the substance of what was said.

Ans. I can't. Do not remember what was said.

51st qu. How much did he say the mortgage was given for?

Ans. I do not know as he said.

52d qu. What did he say as to the property it was on?

Ans. I don't know as he did say.

53d qu. Did any person ever tell you how much it was for; if so, whom and when?

Ans. Do not know who, but several who were interested enough to go over to the court-house and see; can't tell who they were.

54th qu. Then you knew nothing about the amount till some one went over to the court-house and looked and told you?

Ans. I think not.

55th. Who were the parties who were interested enough to go and look?

Ans. I don't remember now.

56th qu. Did those parties inform you what the mortgage covered?

Ans. Do not remember whether they did or not.

57th qu. Did you ever authorize anyone to receive a mortgage for you and put it on record; if so, whom and when?

Ans. I never did.

58th qu. Who ascertained the amount for which the mortgage was to be given?

Ans. Do not know.

59th qu. Had you requested Mr. Dunn to act for you in regard to your husband's estate prior to the time he informed you of the execution of the mortgage?

Ans. No, sir.

159 60th qu. Then the amount for which the mortgage was given

and the execution and record of the mortgage was all without your knowledge up until Mr. Dunn informed you the mortgage had been executed at the time you state?

Ans. Yes, sir.

61st qu. Do you know whether the mortgage was made to you individually or to you as guardian of your children?

Ans. I do not.

62d qu. You say some parties went over to examine the records to see how much the mortgage was for; when was that?

Ans. I cannot say.

63d qu. You had no att'y or ag't acting for you in this matter of the mortgage, so far as you know, or who you ever employed up to the time Mr. Dunn informed you it had been executed?

Ans. No, sir.

64th qu. When did you last request or employ Mr. Dunn to act for you as your att'y in the matter of your husband's estate or anything pertaining to it?

Ans. I think in November, 1873.

65th qu. About how long after Mr. Dunn informed you of the execution and record of the mortgage?

Ans. Do not remember.

66th qu. Was it on his then visit at Mansfield or a subsequent visit?

Ans. It was at a later visit.

67th qu. At whose suggestion or advice did you employ Mr. Dunn to look after your husband's estate?

Ans. I consulted no one; it was on my own suggestion.

68th qu. What led you to think it necessary to employ counsel in regard to your husband's estate?

160 Ans. I do not know unless it was the reports which were in circulation.

69th qu. With whom did Mr. Dunn stay at the time of his visit at Mansfield when he informed you of the execution of the mortgage; you or Mr. Colby or some one else?

Ans. I don't know; he did not stay with me; don't know where he was stopping; I did not ask him.

70th qu. After you learned from Mr. Dunn that a mortgage had been executed to you without your knowledge or request, as you have stated, did you say anything to Mr. Colby about it?

Ans. Do not remember whether I did or not.

71st qu. When Mr. Dunn informed you that a mortgage had been executed to you and recorded without your knowledge, did you enquire why it had been done?

Ans. Do not know as I did or not.

72d qu. Did Mr. Dunn tell you why it had been done?

Ans. I do not remember.

73d qu. You speak of reports, which led you to employ counsel, which were in circulation in November, 1873; what reports do you refer to?

Ans. Reports which were in circulation that Mr. Colby was going to loose heavily.

74th qu. You heard of the failure of the 1st Nat. B'k of Mansfield and Williard S. Hickox on September 26th, 1873, did you not?

Ans. Yes, sir.

75th qu. Who had told you about their failure?

Ans. Don't remember; heard it on the street.

76th qu. There was a good deal of talk and excitement about it, was there not?

Ans. Yes, sir.

161 77th qu. Who was the person you can now remember as the first person who talked to you about it?

Ans. Do not remember; everybody was talking about it.

78th qu. You talked to your neighbors about it—Mrs. Mercer, Mrs. Luper, Mr. Ford, where you did business—did you not?

Ans. Don't know whether I did or not.

79th qu. You talked with your niece and nephew, A. C. Cummins and wife, did you not?

Ans. Just as I would to anybody else; do not remember anything that was said.

80th qu. Did you not talk with your nieces, Mrs. Hade and Mrs. McBride, and your brother-in-law, Mr. Colby, did you not; and Mr. Lester Armentrout, your brother, was teller in the bank near your residence, was he not?

Ans. I do not know as I did.

81st qu. You saw these parties every day, and sometimes several times a day, did you not?

Ans. Yes, sir.

82d qu. Mr. Colby at that time and subsequently passed your house several times a day, coming down to post-office and business part of town and returning, did he not?

Ans. Yes, sir.

83d qu. Was it not a fact that Mr. Hickox and Mr. Colby were the most intimate friends in social and business matters, leading members of the same church, naming their young sons for each other, &c.?

Ans. I do not know anything about their intimacy; were members of the same church; they named their children after each other.

84th qu. About how old are these two sons, and what are their names?

Ans. Their ages I do not remember; their names are Williard Colby and Hubbard Hickox.

162 85th qu. Is it not Williard Hickox Colby, and about what age would you say they were?

Ans. I cannot say whether it was Williard Hickox Colby or not; their ages, I should say, were between 4 and 5 years.

86th qu. On the day of said failure and during the week following, or the days for a week following, you were around as usual sociably talking with your neighbors and friends in Mansfield, were you not?

Ans. I presume I was.

87th qu. Who was your ag't to manage and control and look after your husband's estate and its interests on Oct. 1st, 1873, and for some time prior thereto.

Ans. Mr. Colby, and never any one else—Mr. Hubbard Colby.

88th qu. Please state who told you and when, Mr. Colby was worth the amount you have stated in your examination-in-chief.

Ans. No one.

89th qu. Did any one ever tell you what he had and owned; and, if so, who and when?

Ans. No one ever told me; but I have heard talked of. He owned a good deal of real estate, and I supposed he was worth the amount I have stated.

90th qu. Did you have any conversation with Mr. Colby, and on the day of the failure of the 1st Nat. Bank, and Mr. Hickox, or at any time after that and before the conversation with Mr. Dunn on the day the mortgage was spoken of?

Ans. I did not.

91st qu. Did you not see him to speak to him during that interval of time?

Ans. Did not see him to talk with him; may have seen
163 him, but do not think he was in for several days.

92d qu. Between Sep. 26th, 1873, the date of the failure, and the day of your conversation with Mr. Dunn, you had conversed with persons in regard to Mr. Colby's matters and yours, had you not?

Ans. Not that I remember of.

93d qu. Do you recollect of talking with Mr. Simmons on the subject?

Ans. No, sir.

94th qu. With Mr. P. P. Ford?

Ans. No, sir.

95th qu. With Mrs. Jno. Luper?

Ans. No, sir.

96th qu. With Mrs. Wm. B. Mercer?

Ans. No, sir.

97th qu. Do you recollect whether or not you did talk with these parties?

Ans. I know that I did not.

98th qu. At the time of the failure of 1st Nat. Bank, Hickox, and McMann, and the closing of the other banks, was not there great excitement about money matters and about men breaking up, and was there not a good deal of talk on that subject?

Ans. Yes, sir; I suppose there was.

99th qu. How long before the date when Mr. Dunn informed you this mortgage had been executed had you received any money by the hands of Mr. Colby?

Ans. I always got so much money the first of the month, and would not draw any until the first of the nexth month. The last I got was $75.00, and it was the first of September.

100th qu. How was it paid?

Ans. I went in and asked the boys for it, and they gave me money at the Farmers' Nat. Bank.

164 101st qu. Did you sign any paper at the time of getting the money?

Ans. No, sir.

102d qu. Was there anything said to Colby by you upon or at the time you received that money; if so, what?

Ans. Nothing that I remember of.

103d qu. Had you not said to parties prior to Oct. 1st, 1873, that it was hard to get money out of Mr. Colby?

Ans. Do not know as I did.

104th qu. Had you not said something on this subject?

Ans. Not that I remember of.

105th qu. Who was the girl working for you on and for some time prior to Oct. 1st, 1873?

Ans. Mary Stapleton.

106th qu. Did you not tell her that it was hard for you to get any money out of Mr. Colby, even enough to pay her wages, or in substance that?

Ans. No, sir; I did not.

107th qu. Did you never say anything to her about the matter?

Ans. Nothing, except that times were so close I could not afford to keep her.

108th qu. Did not parties frequently talk to you about your husband's estate being all in the hands of M. Colby, and of the danger of entrusting it all to him, or in substance that?

Ans. No, sir.

109 qu. Did not Mrs. Simmons and Mrs. Luper and your mother speak to you on that subject?

Ans. I never allowed any one to talk with me on that subject.

110th qu. Did they attempt to talk with you on that subject, or either of them?

Ans. No, sir.

111th qu. Did not your brother, Lester Armentrout talk with you on that subject?

Ans. No, sir; never.

112th qu. Did you not go to Lester at one time and say in substance to him that a good many persons had been talking to you about Colby's management of your husband's estate, and of the possible danger of letting it remain in his hands, and did he not reply in substance to you that if you were afraid of Colby you were entitled to have some one else appointed to administer on his estate?

Ans. I do not remember any such conversation.

113th qu. Do you recollect when Capt. Cummings or Mrs. Cummings were making efforts through the probate court to have Mr. Newman's estate released as bail for you as guardian of your children?

Ans. I never knew anything at all about it.

114th qu. Did you never hear of their saying they wanted the Newman estate released?

Ans. No, sir.

115th qu. Did you not get a note from the probate judge during the State fair in 1873 to that effect?

Ans. All I got from the probate judge were the papers I have presented to the register on this examination.

116th qu. What did you say to Mr. Colby, and what did he say to you when you handed him the papers from the probate judge?

Ans. I told him to attend to the matter, and he said he would; that was all that was said.

117th q. Did you not read these papers?

Ans. Yes, sir.

118th q. Then you must have learned from the reading of your paper, June 11th, 1873, that you were required to give new bond or acc't of efforts to have the Newman estate released, and are you not mistaken in your former answer in this cross-examination on this subject?

Ans. I did know when I got the paper that I was required to give new bond on acc't of the Newman estate, but I did not know who was making the effort; the former question asked me if Capt. Cummins and Mrs. Cummings were making efforts, to my knowledge. I did not know who were making the efforts.

119th qu. What did you do in regard to your guardianship or your husband's estate after receiving the first paper, dated June 11th, 1873?

Ans. I gave it to Mr. Colby, and he attended to it.

120th qu. Did you learn whether or not new bail was given, and who?

Ans. I did not.

121st q. Did you sign after that any papers relating to your guardianship and your husband's estate; if so, in whose hands were they?

Answer. I did; and in Mr. Dunn's hands.

122d q. That was long after the execution of the mortgage, and about the time of your resignation as guardian, was it not?

Ans. Yes, sir.

123d q. Are you not also mistaken in a prior answer of this cross-examination when you say you did not speak with Mr. Colby from failure of the 1st Nat. Bank to the day of your conversation with Mr. Dunn, and did you not hand him the paper received from the probate judge on Sep. 29th, 1873, or on the day following?

167 Ans. I handed him the paper, but had no conversation with him. He was passing in the buggy. I ran out, handed him the note, told him to attend to that, and went into the house.

124th q. Who handed you this paper of Sept. 29th, and when?

Ans. The deputy clerk brought it to the house.

125th q. Were you called on by Mr. Colby or Mr. Dunn to sign any papers in regard to your guardianship on that day or the next?

Ans. Do not remember.

126th q. Were you at any time called on except when Mr. Dunn was appointed to sign any papers?

Ans. Do not remember.

127th q. Why, Mrs. Barbour, would you not permit parties to talk with you about your matters in Mr. Colby's hands?

Ans. Because I thought they were meddling with something which was none of their business.

Re-examination:

1st q. Explain what you mean in answer to the question, who was your ag't to manage and control and look after your husband's estate and its interests on Oct. 1st, 1873, and for some time prior thereto, when you say Mr. Colby was.

Ans. I meant that he was adm'r of the estate, and when I had any business to be attended to he attended to it. He attended to all business I asked him to do. This is the only explanation I can give of it.

Recross-examination:

1st q. You had no other agent but Mr. Colby to attend to your business matters until you employed Mr. Dunn, in Nov., 1873, had you?

Ans. I had no one. Mr. Colby was adm'r of my husband's estate.

2d q. Have you conversed with any parties on this matter since the adjournment at noon?

168 Ans. No, sir.

MELISSA A. BARBOUR.

Sworn to before me, and subscribed in my presence, Dec. 23d, A. D. 1874.

HENRY C. HEDGES, *Register.*

Testimony of Hubbard Colby.

Also HUBBARD COLBY, who being sworn by me to testify the truth, the whole truth, and nothing but the truth in said cause, deposes as follows:

1st q. (By A. K. DUNN, Esq.) Are you one of the defendants in this suit?

Ans. My name appears in the papers as one of the defendants.

2d q. How long have you resided in the town of Mansfield?

Ans. Something over 30 years.

3d q. State whether or not you are the adm'r of the estate of Justus S. Barbour, dec'd?

Ans. I am.

4th q. Who are your sureties on your bond as his adm'r?

Ans. I cannot tell without reference. Upon examination I find, B. S. Remyan, W. S. Hickox, and H. P. Davis.

5th q. When did you file your acc't as such adm'r in the probate court of Richland County?

Ans. My final acc't was filed early in Oct., 1873.

6th q. What was the am't of your indebtedness to his estate at that time?

Ans. I stated in my schedule $24,594.82, and my recollection is that is the correct amount.

7th q. What was the am't of your liabilities on Oct. 1st, 1873, exclusive of your liability as surety of W. S. Hickox?

Ans. I don't think I can state separately. I perhaps might get near the am't by taking time.

8th q. Will you take the time and give the am't, or an approximate amount?

169 Ans. I will. On examination my individual liability was about $168,000, and my indorses for others, other than Hickox, about $20,000, and other than the M., C. and L. M. R. R. Company.

9th q. What was your liabilities, as surety of Williard S. Hickox, at that date?

Ans. At that time it was about $58,000, as I learned in November afterwards.

10th q. State the amount for which you were liable with others for the Mansfield, Coldwater and Lake Michigan Railroad Company?

Ans. H. H. Sturges gave it to me as being $50,406.08. I learn that this indebtedness has been reduced some $10,000, and that the bal. will be col'd off of R. R. Co. and the co. has given its notes for it.

11th q. What was your financial condition on Oct. 1st, 1873, so far as you knew at that time?

Ans. My assets at a fair valuation would exceed my liabilities more than $100,000.

12th q. What am't were you liable as surety for W. S. Hickox, that you know of, on Oct. 1st, 1873?

Ans. I cannot say that I knew of any definite sum. I had signed some notes as bail for him, but I did not know at that time in what amount nor what notes, if any, were outstanding. I now recollect that I signed a note some few weeks prior to that time, which I think was filled for $5,000.00 and was payable to some bank at Delphos, due in 60 or 90 days; that is all that I can recollect of.

13th q. When, with reference to Oct. 1st, 1873, were doubts of your solvency first entertained by you, and when by the community in Mansfield?

Ans. The first intimation that I had was in the latter part of

170 October, 1873, when the party who filed the petition against me in bankruptcy threatened to file such a petition unless I secured a note which he held, on which I was bail. At that time I looked over my liabilities, so far as I knew, and also my assets, and was satisfied that I was solvent and could take care of everything if creditors would let me alone. In my judgment my property ever has and does now, at a fair valuation, or a valuation at which it was considered worth prior to the financial troubles of 1873, exceeded my liabilities. I am not able to say as to when the community in Mansfield first had doubts of my solvency.

14th q. How long after the failure of the 1st Nat. Bank of Mansfield

and Williard S. Hickok, on Sept. 26th, 1873, was it before you learned your liabilities for Hickox and his financial condition?

Ans. I did not learn the whole amount of my liability for him until I was making out my schedules in bankruptcy November, 1873. I had learned, perhaps about the middle of Oct., maybe a few days later, that I am on about $30,000 of his paper. I think there were statements to the effect that he was financially insolvent shortly after and perhaps at the time of the failure.

15th q. When were the letters from the probate judge of Richland Co. mentioned by Mrs. Melissa Barbour in her testimony first placed in your hands?

Ans. The one dated in month of June, 1873, I should think very soon after she received it, and the one dated in Sept., 1873, on the day she received it, which, I think, was on the day of its date.

16th q. What did you do with reference to the matters mentioned in these letters?

171 Ans. As to the one dated in June, 1873, a new bond was filed; as to the one dated in Sept., 1873, the acc'ts of Mrs. Barbour, as guardian for her children, and my acc't as adm'r of the estate of J. S. Barbour, were made out and filed; and, in order that funds in my hands should be invested in accordance with the requirements of the law, I executed mortgages for the am't in my hands.

17th q. Who was on Mrs. Barbour's bond, as guardian of the children of herself, filed in pursuance of the letter bearing date June 11th, 1873?

Ans. My recollection is that it was W. S. Hickox and myself.

18th q. Did you tell Robt. H. Rowland, treasurer of Richland Co., Ohio, on or prior to Oct. 2d, 1873, that you had failed and would have to rub out the slate and begin anew, or anything of that import?

Ans. I did not.

Cross-examination:

1st q. by L. B. MATSON, esq. What money and property had you when you came to Mansfield, Ohio?

Ans. Impossible for me now to state.

2d q. Do you say you do not recollect what you were worth at that time?

Ans. I do.

3d q. What real estate, if any, had you?

Ans. I do not recollect that I had any.

4th q. What amount of money had you?

Ans. I am not able to say.

5th q. State about how much.

Ans. Utterly impossible for me to state.

6th q. Have you not frequently stated that you had not any?

Ans. I am satisfied that I have not, as it would not have been true if I had.

7th q. Was it as much as a $1,000.00?

172 Ans. Cannot say.

8th q. Where did you come from when you came to Mansfield?

Ans. Lexington, Ohio.

9th q. What bu*i*s had you been engaged in there?

Ans. My principal business was teaching school.

10th q. How long had you been teaching school, and at what salary?

Ans. I think it was about two years, and I cannot recollect the salary.

11th q. About how much was the salary?

Ans. I think for the dist. school it must have been, perhaps, in the neighborhood of $20.00 per mo.; can't say definitely.

12th q. What was your age when you commenced teaching school in Lexington, Ohio?

Ans. Think about 21 years.

13th q. About how much money had you when you commenced teaching school then?

Ans. I cannot say how much.

14th q. Do you swear you cannot now recollect about how much means you had?

Ans. I am not going to state positively.

15th q. What is your best recollection as to the amount you had?

Ans. I should think it was less than $100 in money.

16th q. Were you then the owner of any real estate; if so, where?

Ans. I had no real estate.

17th q. Had you any other property?

Ans. I had some other.

18th q. What and where was it?

Ans. I think it consisted mostly in my first lot of law books.

173 19th q. What business did you engage in and for how long when coming to Mansfield?

Ans. Reading law.

20th q. What next, and for how long?

Ans. Taught school portion of the time I was reading.

21st q. What next and how long?

Ans. Practicing law, and also interested in merchandizing some six or seven years.

22 q. With whom was engaged in the mercantile business, and how much capital had you invested?

Ans. Geo. Armentrout. I do not recollect the amount of means.

23d q. Where was the mercantile house?

Ans. On the lot on corner of west Diamond and 2d st's, in Mansfield, Ohio.

24th q. Can't you give any idea of the amount of capital you had invested in that business?

Ans. I cannot. It was several thousand dollars.

25th q. Mr. Armentrout failed in the mercantile business, did he not?

Ans. He did not.

26th q. When did that house and firm cease to do business?

Ans. I cannot give the date.

27th q. At the time they ceased to do business, what was the value of their assets and amount of their liabilities?

Ans. They had no liabilities when the business was closed up; am not able now to give the amount of assets.

28th q. About how much was the net value of assets?

Ans. Impossible to tell from my recollection.

29th q. When did you go with the Farmers' Bank as cashier?

Ans. I think in 1851.

30th q. State what real estate you then owned, and the then market value of each piece.

Ans. I cannot now say.

31st q. Did you own any?

Ans. I did.

174 32d q. You say you did own real estate then, and now can't tell what it was?

Ans. I am not able to say how much.

33d q. What was the then market value of the real estate you then owned?

Ans. I cannot say. I recollect I owned the property where I am now living.

34th q. When, and of whom, and for what consideration did you purchase it?

Ans. I think it was purchased either in 1846 or 1847, of F. A. Shearer, the exact am't I cannot now state; I think in the neighborhood of $1,500, perhaps less.

35th q. Can you think of any other real estate you then owned at the time you went into bank?

Ans. I cannot recollect as to dates; but my impression is that I owned 16 acres, which is now known as Colby's addition to the city of Mansfield.

36th q. When, of whom, was that 16 acres purchased, and how and what am't was paid for it?

Ans. As I said, I am not able to state when. It was purchased of Geo. Armentrout, at $200 an acre, and paid for it cash.

37th q. Was it paid to Geo. Armentrout in cash?

Ans. I don't recollect whether it was paid to him, or whether I took up some paper for borrowed money.

38th q. Was it not a fact that Mr. Armentrout had become involved on acc't of his mercantile and other transactions, and that you assumed liabilities for him and the firm and took this property in lieu of it?

Ans. As I have said, I cannot recollect whether I paid him the money or took up that amount of his paper.

39th q. Mr. Armentrout was your father-in-law, was he not, and
175 your partner in mercantile business?

Ans. He was.

40th q. When did he die?

Ans. In 1865; fall of that year, I think.

41st q. He had not been the owner of any property for many years before his death, and died without an estate, did he not?

Ans. He did own property, and died with an estate.

42d q. What property did he own at the time of his death, and what was his estate?

Ans. I think his estate consisted wholly of personal property, the amount of which I do not know; think it was mostly in gov't bonds.

43d q. About how much was it?

Ans. I cannot give the am't or approximate to it; my recollection is that Mr. Dunn and myself for our heirs released to the other heirs all rights in the estate, and I for one never enquired into it or had anything to do with it.

44th q. Do you say you never learned from your wife how much the heirs received from that estate?

Ans. My wife, the daughter of Mr. Armentrout, was not living at the time of her father's death.

45th q. Where did he keep his bonds, if any he had?

Ans. I do not know as I can tell, b'y my impression is a special package in the vault of the bank.

46th q. Did he not live for many years prior to and up to the time of his death within a few doors of the bank of which you was cashier, and were you not intimately acquainted with all his matters?

Ans. He did live but a short distance from the bank. About his affairs of the mercantile business, they had been settled up and disposed of; after that I knew but very little about his private affairs.

176 47th q. Did you ever buy any bonds for him, or know any one else to buy any bonds for him? If so, the amount.

Ans. I did sell him at the bank gov't bonds at different times; the exact time when, or the amount, I cannot now state.

48th q. Have you no recollection whatever of the amount of bonds you sold him?

Ans. I have no definite recollection.

49th q. State what definite recollection you have, either definite or indefinite.

Ans. I cannot answer more fully than I have.

50th q. Do you know of his ever having bonds to the amount of $500.00?

Ans. My recollection is I sold him more than that amount at one time, but I cannot be positive.

51st q. Did he engage in any mercantile business or other business after you and he ceased to do business together, excepting acting as justice of the peace and as notary public for Farmers' Bank; if so, what?

Ans. I think his principal business after going out of mercantile business was that of justice of the peace, an office he held for several terms.

52d q. What amount of money had you when you commenced acting as cashier of the Farmers' Bank, and how was it invested?

Ans. Impossible for me now to tell.

53d q. Had you any?

Ans. I presume I had; I cannot say how much.

54th q. Were you the owner of any bank or other stocks; if so, what?

177 Ans. I cannot recollect when I did become a stockholder in the bank, whether it was prior or subsequent to that time, nor can I recollect whether I had other stocks.

55th q. Did you not then keep a book or memorandum of your assets and liabilities?

Ans. I did not.

56th q. What did your family consist of at the time you went into the bank?

Ans. Self, wife, and, I think, two children, and I suppose a hired girl, and I think a man of general work.

57th q. What was your salary at first as cashier, and how long was it that?

Ans. The first year it was $800. Do not remember how long it remained at that; not long, however.

58th q. How many years would you say it was?

Ans. Can't tell; don't recollect whether it was one, two, or three years.

59th q. If your salary was changed, when and to what amount, and how long did it continue at that rate?

Ans. My recollection is that it was increased to a $1,000, then to $1,200, and then to $1,500.00, and then to $1,800, but how long at each time I am not able to say.

60th q. You say you were the owner of your homestead property at time you went in as cashier; when thereafter did you first make material improvements thereon, and what was the cost thereof?

Ans. My recollection is that I made some changes and improvements the first year, and I don't know as there has been any year since but what I made some improvements. As to the expense, I do not know as I can tell.

61st q. What were the aggregate amount of expenditures by way of

improvements you have made upon your homestead property during the time you were receiving the salaries above-named?

178 Ans. I kept no acc't of them, and to pretend to state from recollection, running back over 20 years, it is merely impossible.

62d q. Would it not exceed $10,000?

Ans. I should think not.

63d q. During all this time you kept a hired hand; at what salary was he working?

Ans. I did not have a hired hand all the time. Sometimes I hired by the day, and sometimes by the month; I think part of the time by the year. Do not recollect just what I paid; I should think, when by the day, in the early years, from 75 c. to $1.00, and when by the month, less than that.

64th q. What would you be willing to say a fair average would be of the am't you paid annually during the time you worked on the above named salaries you paid to hired hand or hands?

Ans. I could not say, for considerable of the time I would hire a man for a short time, say gardening and at odd spells as I would have work to do.

65th q. Would you say it would average less than $300 per year?

Ans. I should.

66th q. How much less?

Ans. Cannot say.

67th q. About how much less?

Ans. I should think for several years it would range from 25.00 to 50.00.

68th q. For 10 years prior to Oct. 1st, 1873, what would it average?

Ans. I should think from $200 to $300.

69th q. You kept domestic help in your home during most of the time?

179 Ans. I think the largest portion of the time.

70th q. For how many years prior to Oct. 1st, 1873, did you keep a team and carriage?

Ans. I should think the most, if not all the time during a period of six or seven years. Having two horses during this period of six or seven years, and prior to that perhaps for eight or ten years I had one horse.

71st q. When did you cease to act as cashier of the Farmers' National Bank of Mansfield?

Ans. I think it was in the spring of 1871.

72d q. At that time what was the number and age, respectively, of your children?

Ans. Four children; one, an infant, the youngest, and the other three, one was 19 or 20; one 21 or 22; and the oldest 24, should say. Can't give exactly without reference to the record.

73d q. When, to whom, and what am't of advancements had you made to your children at the time of your leaving the Farmers' National Bank of Mansfield?

Ans. I am not able to give the exact amount or time when. I have helped them from time to time, in money and in clothing and articles for housekeeping; and I think in January, 1870, at the time of the marriage of my oldest daughter, I gave my two daughters $3,000 each, of bank stock, and my oldest son $3,000 in money.

74th q. What would you be willing to swear that your average annual expenses were, including family expenses, and incidental expenses,

donations, if any, for ten years next preceeding your leaving the bank, and exclusive of taxes?

Ans. I have no means by which I can give the amount; I never
180 kept an account; made it a rule to pay as I went and do not see how I can arive at any definite sum.

75th q. Would you be willing to say they were less than $3,000 per year?

Ans. I have no doubt but they were much less than that; a great deal less than that.

76th q. Have you no idea of the amount in your own mind?

Ans. As I have said I never kept any account, and know of no way of giving the amount or forming any correct idea.

77th q. When did you first become the owner of any stock in the Farmers' Bank, and in what amount?

Ans. As I stated before I cannot recollect whether I had any stock at the time I went into the bank, or whether it was soon after that I purchased the first stock. I am not able to give the date, neither can I now recollect the amount.

78th q. At the time you left the Farmers' Bank what was the amount of your indebtedness to the bank, both as principal and as surety, giving the items of the liability?

Ans. I do not now recollect that I was indebted to that bank. The bank closed business in 1865; I do not remember.

79th q. I refer to the Farmers' National Bank in asking the 78 q.

Ans. My recollection is that I had a note of $8,000.00 at that time which I paid during the coming season. There was at that time an indebtedness to the bank on acc't of the Huntington Co. B'k of Indiana, in which I was interested as a stockholder to a small am't; the
181 amount of which *if* I am *now* able to state. There was also an indebtedness on acc't of Conn, Sherman and Co., in which I was interested as a partner, the exact amount of which I cannot state. I think in the *n*aborhood of $3,000, perhaps less. On reflection, I think the Huntington Co. B'k item was some 6,000 or 7,000; I do not now recollect of anything else.

80th q. You have been renewing and carrying that Conn, Sherman and Co. liability for how long?

Ans. There had been an indebtedness of several years; cannot state the time now; and the paper had been renewed from time to time.

81st q. Who were the members of Conn, Sherman and Co., and what was the extent of your liability on that note, and who made the renewals?

Ans. I am not able to give names of all the members of that company. I saw the article of agreement at the time I signed it, when the company was formed, and I have no recollection of seeing it since. My memory is that I put in $1,000, and am not sure but what my interest was to be $2,000.00, but think I was only called on for $1,000.00. In this I may be mistaken. I think the renewals were made by me.

82d q. State such persons as you know to be members of that firm, and what interests you bought out after the original formation of the firm.

Ans. I think C. T. Sherman, A. Conn, and I think Jacob Parker was. I cannot say what others; if any, perhaps John Sherman was, but I cannot say. I do not recollect of buying any interests. I think that C. S. Avery offered to transfer his interest to any one that would take it and assume its responsibility. I offered to take it, and he transferred it to me. My recollection is that I did not pay him for it.

83d q. Who received, and what became of, the assets of that
182 firm existing at the time they ceased to do business?

Ans. The cash assets we used in paying depositors. The same cash was deposited in the Farmers' Bank to the cr. of Conn, Sherman and Co., and as depositors called it was paid out to them. Other assets mostly were in the hands of att'ys for collection.

84th q. What finally became of the assets after collection?

Ans. A portion of it was collected and applied in payment of the debts of the firm; and, as I understand, a portion is yet uncollected.

85th q. Why was that liability carried and renewed so long and has not as yet been paid?

Ans. If the assets had all been collected the debt would have been paid. I think there is a balance of near $3,000 unpaid.

86th q. And that is still a subsisting liability for which your estate is liable, is it not?

Ans. I suppose my estate, with the other parties, is liable for it.

87th q. What was the original amount of that claim in favor of the bank?

Ans. I think the origin of the indebtedness was to promise for depositors, there not being cash enough on hand at the time to pay depositors, and as funds were needed from time to time discounts were had. Whether it was ever paid off at any one time and new discounts made, I am not able to say.

88th q. What was the largest amount of liabilities of Conn, Sherman and Co. to the Farmers' B'k, or Farmers' Nat. B'k, of Mansfield, and about when?

Ans. I think the largest amount was to the Farmers' Bank, at
183 about the time it closed business, and must have been some $10 or $12,000; can't give exact amounts.

89th q. And that was evidenced by a note made by you in name of Conn, Sherman & Co.?

Ans. I think it was.

90th qu. About how much was the liability of Conn, Sherman and Co. to the Farmers' National Bank in January, 1870?

Ans. I could not tell without reference to the books. My impression is, in the naborhood of what it now is.

91st q. How was the debt of the Huntington Co. Bank, of which you speak, evidenced?

Ans. By note signed by S. Lewis, I think, and it may at that time been signed by J. Weldon, but of this I am not certain.

92d q. How did that happen?

Ans. S. Lewis, as I understood it, was a large, and perhaps the largest, stockholder in the Huntington Co. B'k of Indiana, and the funds were procured for the benefit of that bank, and Lewis made the paper.

93d q. Were you liable on acc't of the claim; if so, how?

Ans. I was a stockholder to the am't of $1,000.00 in the Huntington Co. Bank. That was my liability. Afterward I took the paper up from the Farmers' National Bank, and a portion of my indebtedness to the bank at this time is in consequence of taking up the papers.

94th q. You gave your papers in lieu of the other; if so, for how much, and when?

Ans. I think I gave my papers for 7,500 some time in the summer of 1871.

95th q. What became of the Lewis note?

Ans. It is at the Farmers' National Bank, as mentioned in my schedule of assets.

96th q. How much were you indebted to the Farmers' National
184 Bank on Oct. 1st, 1873, as principal and as surety? and give the items of indebtedness.

Ans. One note of 2,500.00; one note of 7,500.00. I was on a note with J. Hade for $10,000, and whatever liability there may be on the indebtedness of Conn, Sherman and Co.; do not recollect of anything else.

97th q. What relation were you to J. Hade, and what was done with the money for which the obligation of $10,000 was made?

Ans. Mr. Hade married my daughter. Either $5,000 or the proceeds of $5,000 was used for my benefit. I do not know as to the rest.

98th q. Were you not on paper for your son, H. H. Colby, to that bank?

Ans. Not to my recollection.

99th q. What was the then capital stock of the Farmers' Nat. Bank?

Ans. $100,000.00.

100th q. At the time of the formation of the 1st Nat. Bank of Mansfield, Ohio, or soon subsequent or prior thereto, did you not loan Williard S. Hickox $18,000, or about that amount, out of the Farmers' Bank, or Farmers' National Bank? If so, state fully the history of that transaction, and all that was done in relation thereto.

Ans. I have no recollection of loaning him any amount at any time. He may have had a bill discounted; but if so, it was for a small amount. My impression is there was no loan.

101st q. Have you stated now all you know of that transaction.
185 Ans. I have not the remotest recollection of any transaction whatever at that time or any other time.

102d q. Don't you recollect of carrying Williard S. Hickox' check for an am't of near $18,000, as the assets of the Farmers' or Farmers' Nat. B'k, while you were cashier?

Ans. I do not.

103d q. Did you let Mr. Hickox have any money at the time or shortly before or after the opening of the 1st Nat. Bank?

Ans. I do not recollect of any; if he got any, the books of the bank will show.

104th q. Did you not carry W. S. Hickox' check as assets without making any entry on the books at the time above mentioned?

Ans. Have no recollection of anything of the kind.

105th. q. Is your memory weak and frail on matters of business in years that are past?

Ans. I think not.

106. Do you say you never had any such transactions, or similar ones, with Hickox?

Ans. I say I have not the slightest recollection of any such transaction.

107th. Did you assist Mr. Hickox, directly or indirectly, in the procurement of money or credit to any amount at the time he first became interested in the First Nat. Bank, or subsequent thereto? If so, state fully just what you did do in the premises.

Answer. I have no recollection of rendering him any assistance whatever pecuniarily at the time of the organization of the 1st Nat. Bank, but at the time that he was negotiating for the purchase of Mr. Woodruff's stock in that bank, he informed me that he had not the means to pay for the stock in case he bought it, and would have to *hare to* borrow
186 some money, and asked me if I would go on some of his papers to raise money for that purpose, saying that he would put stock

as collateral when he used my name. I told him I would do so, and did shortly afterward sign some paper with him, and from time to time signed his papers when he requested it, supposing that it was to help him in that particular transaction.

108th q. Was Hickox' check, draft, or note in the Farmers' *Br.* B'k or Farmers' Nat. B'k, of Mansfield, O., to any am't whatever at the time or subsequent to the formation of 1st Nat. B'k while you were cashier of the first-named bank?

Ans. As I have said, he may have had a discount; but I do not now recollect of any. Nor do I recollect*ion* of any check, draft, or note.

109th q. When was Cunningham H. Purdy teller of the Farmers' Bank of Mansfield, Ohio, and when did he cease his connection with that b'k or its successor.

Ans. I am not able to say without refere.ce to the books.

110th q. About when?

Ans.

111th q. Do you know of any check, draft, note, or obligation of W. S. Hickox at any time forming a part of the cash of the Farmers' or Farmers' Nat. B'k while C. A. Purdy was teller thereof.

Ans. I do not recollect of any.

112th q. What were your liabilities to or on acc't of the Port Washington Coal and Mining Co., on Oct. 1st, 1873.

Ans. I was the owner of 5,000 of the stock in that company, and had, with others, signed the bonds, conditioned that the title to certain lands in Tuscarawas County, Ohio, was good, or should be made
187 good. The aggregate of the bonds was $100,000 or $150,000, I think. I do not think, however, there was any risk to be apprehended growing out of said bonds.

113th q. You were holding official position in said company—what?

Ans. President.

114th q. Were you not really acting as treas'r of the co., and controlling its funds?

Ans. I was not, only so far as being authorized to receive the purchase money for property sold and apply the proceeds upon liabilities.

115th q. State the nature and object of the bond.

Ans. I have answered in my answer to the 112th question.

116th q. What was the am't offered and assets in your hands on Oct. 1st, 1873, and am't of your liabilities at that date to the company?

Ans. My recollection is that there was a balance due me of between $2,000 and $3,000.00. I suppose my liability would be answered in a former answer to a former question.

117th q. Then why is not that claim in your schedule of assets sworn to by you in the proceeding in bankruptcy?

A. It is in my schedule.

118th q. Do not Mr. Leiter and Mr. Strong and others claim you are indebted to said company, and does not your examination at Cleveland show that fact?

Ans. As I said in answer to a former question, I suppose I would be liable, perhaps, on acc't of whatever liability there may be, if any, as a stockholder. I do not know that the examination at Cleveland shows any different from what I now state. I do not know what Leiter and Strong and others claim.

119th q. Was not the Port Washington Coal and Mining Co. ascertained to be insolvent prior to Oct. 1, 1873, and has it not been adjudicated bankrupt?

188 Ans. It has been adjudicated a bankrupt; but, as I suppose, its solvency depends on the value or rather what can be realized

out of an interest in the Glasgow and Port Washington Co., of which I think the Port Washington Coal and M. Co. own can't say how many shares, being for the one-tenth of which the Port Washington Coal and Mining Co. sold the property for, less C. and J. Cheny's commission.

120th q. How much stock did you own on Oct. 1st, 1873, in the Mansfield Machine Works, when you got it, and what money you paid for it?

Ans. I owned $70,000; am not able to tell the times when I got the stock; I paid for all of it except, I think, $5,000; that I got of Mr. E. A. Reese. One day, when he was feeling pretty blue, he said if I would give him a $1,000.00 I might have 5,000 of the stock; I took him up, and he transferred it.

121st q. Do you wish to be understood as swearing you paid $65,000 in money for the residue of your stock?

Ans. My recollection is I did, in money and dividends.

122d q. Of whom did you buy it, and how much money did you pay for your stock?

Ans. I do not recollect of purchasing any stock other than what I subscribed for as a stockholder, except the $5,000 mentioned as purchased of Reese, and $5,000 or $10,000 purchased of Reese prior to that, for which I paid him par, and $5,000 of the Monroeville Bank at par.

123d q. How much stock did you subscribe for, and how much money did you pay them, and to whom and when?

Ans. I will, by taking time to examine, give an exact answer,
189 but cannot from recollection, and will examine and furnish it. On examination I find, in 1865 the company was organized with a capital of $50,000, of which I subscribed $10,000, and paid for same at par. In 1867 the profits had accumulated to $70,000. Of this $20,000 was paid in cash to stockholders, and the capital of the co. was increased $50,000, and a dividend was made to pay to an amount of the increased capital. My stock was then $20,000.00. In 1868, the profits amounted to $43,318.88 out of which a cash dividend of 25% was made. In 1869 profits amounted to $58,415.77, out of which a cash dividend of 25% was made. In 1860 I bought of E. H. Reese $10,000 of stock at par. In February, 1871, the profits amounted to $100,000, and a dividend was made to stockholders of 100%. We paid the amount into the company and increased its capital. In the fall or winter of 1871 I bought of Monroeville Bank 5,000 at par. In 1872, I bought of E. H. Reese the 5,000 of stock heretofore mentioned. In Dec., 1872, the profits amounted to $36,674$\frac{15}{100}$, out of which a dividend of 10% per cent. was made.

124th q. State the actual amount of cash you paid for stock, exclusive of all dividend and earnings or pretended earnings of the company; when and to whom paid.

Ans. I paid $10,000; originally subscribed to the treasurer of the company. In 1869 I paid E. H. Reese, for his $10,000 of stock, $10,000 in money; one half of this was cash at the time, and the balance, with interest, some months afterwards; I cannot tell precisely the time. The $5,000 bought in 1871 of the Monroeville Bank was purchased, I think, on 3 years' time, with interest, at par, and a note given and the stock retained by the bank as collateral. The note is unpaid.

125th q. Then you actually paid out of your means, independent
190 of the company, $21,000.00?

Ans. I did; exclusive of the note that was given for the Monroeville stock.

126th q. What was the total am't of cash dividends paid or allowed you?

Ans. $21,000.00.

127th q. What position did you hold in the Mansfield Machine Works on Oct. 1st, 1873, and for some time prior thereto?

Ans. I was director and president.

128th q. On 1st day of Oct., 1873, the company was indebted, for borrowed money and materials used, $190,000.00, or about that sum, was it not?

Ans. I am not able to state the exact amount; but my impression is it was between $180, and $190,000.

129th q. Was not this company largely indebted for borrowed money and otherwise when this capital stock was increased, and when these dividends were made?

Ans. My recollection is, that for several years after the company was organized the amount of borrowed money or indebtedness was not large, and my impression is that at times the indebtedness was very little, if any; at other times, on acc't of the purchase of stock and machinery, it would be larger. In 1872 and '3 quite a large amount of stock, including lumber and material for cars, was purchased, and the amount of the indebtedness was largely increased.

130th q. Was it not largely increased from borrowed money?

Ans. I presume enough money was borrowed to buy stock and material with.

131st q. Was not the company largely indebted for borrowed
191 money and otherwise when the last dividend was made, and on which the company was paying interest at 10 %?

Ans. I am not able to say what the amount of indebtedness was at that time; nor am I able to say what rate of interest. I think 10 % was paid for some, and a less rate for some.

132d q. What was the cash market value of the stock of this company on Oct. 1st, 1873, in your judg't, or to your knowledge?

Ans. I do not know that any was changing hands at that time; can't say what it would have sold for on the market. I don't think that any of the stockholders, unless one of them, would have been selling to have taken much less than par, if any.

123d q. Mr. Reese was sup't of the works when you bought his stock, was he not?

Ans. He was.

134th q. Was not his $5,000 of stock you purchased with a $1,000 the last you have any knowledge of being sold?

Ans. I think he afterwards sold some stock to Mr. Grimes, or used it in a trade.

135th. Was not all of your stock in that company on Oct. 1st, 1873, held by your creditors as collateral security; if not, how much was not?

Ans. My recollection is that it was.

136th q. You say in your schedule that you are the owner of 10,500 of stock at the Farmers' National Bank of Mansfield. Where was that on the 1st day of October, 1873?

Ans. $10,000 of it was in the 3d National Bank of Cincinnati, Ohio, as collateral to a bill of that amount. The other $500.00 stands on the stock-book in my name. I never received a certificate for it.

137th q. What was the stock of the Mansfield Gas Light Co. paying in dividends on or about the 1st day of October, 1872?

192 Ans. It had been paying for several years, with perhaps two or three omissions, 2½ % every three months, exclusive of taxes.

138th q. When and of whom did you purchase said stock, and what did you pay in money therefor?

Ans. Quite a large amount of my stock was picked up from time to time, mostly, I think, from the smaller stockholders, running through a period of some 12 or 14 years, and I would not be able to tell of whom I purchased it. I know of no way of getting at it. I think the least I paid for any of it was 60 or 62c., maybe 65 cts. on the $1.00, and, I should think, none higher than, perhaps, 80 cts. on the $1.00, except the original stock which I had, which cost, with interest upon payments made for building the works, more than par.

139th q. Of whom did you buy the paper-mill stock mentioned in your schedule, and what did you pay therefor?

Ans. My recollection is that I subscribed that much of the capital stock, and it was paid for at par.

140th q. Do you mean to say you paid $5,000 for it?

Ans. Yes, sir,

141st q. I see you have estimated your M. C. W. and L. M. Co.'s stock at $10,000; was it worth anything on Oct. 1st, 1873?

Ans. I do not know what it could have been sold for; perhaps not at all.

142d q. Is it not more apt to be charged with an assessment than to draw a dividend?

Ans. I do not think the chances for a dividend are very flattering.

193 143d q. The stock in the Mansfield, Newark and Sandusky R. R. Co. was comparatively useless, was it not?

Ans. I have been told it has been selling at from 20 to 30 cts. on the dollar, that may for stock in the company as reorganized, and am not sure how this certificate is.

144th q. Was not your stock in the Atlantic and Great Western R. R. Co. worthless?

Ans. I think so; though I have no knowledge of it in fact.

145th q. On Oct. 1st, 1873, you were indebted to the Farmers' National Bank of Mansfield to an am't greater than your interest therein as a stockholder, were you not?

Ans. I think not.

146th q. On Oct. 1st, 1873, had the Mansfield Gas Light Co. stock any market value; if so, what was it?

Ans. I cannot say what the market value might have been. I should not have been willing to have taken much, if any, less than par.

147th q. Had paper-mill stock any market value then; if so, what?

Ans. I cannot say.

148th q. Was not the Farmers' National B'k at that time so far indebted that its stock was worth less than par?

Ans. I think it should have been really worth but little, if any, below par. Can't say what it would have sold for on the market.

149th q. What was the indebtedness of the Farmers' Nat. B'k, on Oct. 1st, 1873?

Ans. I am not able to say.

150th q. Was not all your stock in the Farmers' Nat. B'k, Mansfield Gas Light Co., Mansfield Paper-Mill, pledged as security to your creditors, and held by them on Oct. 1st, 1873?

Ans. I think $500 of the bank stock that was not—the stock for which no certificate was issued; all the rest was.

151st q. You claim to have been solvent on 1st day of Oct., 1873;

now, taking into consideration the existence of the panic, the
194 stringency of the money market, the depreciation of all stocks, the depreciation of the value of real estate, and give the then market value of all your stocks and real estate, item by item, and a statement of all your liabilities at that time, including int., please explain how you make yourself solvent.

Ans. I have endeavored to ascertain, so as to answer this question, but find it very difficult, as I have to trust largely to memory, and cannot speak positive or definitely as to whether I have got all the items, but have done the best I could, and give my assets as follows:

Stock in Mansfield Machine Work	$70,000
Stock in Farmers' Nat. Bank	10,500
Stock in Mansfield Gas Light Co.	20,500
" " paper-mill	5,000
	$106,000

The value of these stocks, I should say, were par, or nearly so, and whether the panic had depreciated them on 1st day of October, 1873, from what they were for some time prior, and to what extent, if any, I am unable to say, for I do not recollect of any transactions in them about that time, or for some time prior. The stock in Mansfield, Coldwater and Lake Michigan Railroad Company, $10,000, I do not know that I had any market value, nor can I tell whether it would have sold at that time for anything; I should think it doubtful. The stock in Sandusky, Mansfield and Newark R. R. Co., $300.00, as I have heretofore said, I understand, if it is stock in the company as reorganized, was selling at from 20 to 30c. on the dollar; if old company stock it would be worth about ⅓ of the stock in reorganized company, or thereabouts. The stock in Atlantic and Great Western R. R. Co., 305\frac{3\,6}{1\,0\,0}$.
195 This I don't think would have sold at any price, perhaps. The stock in the Farmers' Branch Bank, of Mansfield, $26,200.00, the amount of which stock has been repaid and would be worth whatever the surplus might be, if anything, in the final winding up of its affairs. It might not have sold for any price. Stock in Mansfield Coal-Oil and Mining Co., $2,050 00, I should say would have sold for very little, if anything; stock in Port Washington Coal and Mining Company, $5,000, I do not think would have sold for anything. As to the real estate:

About 3½ acres of land called the Homestead	$30,000
" 130 " known as the Bell Farm	50,000
Undivided half of lot on corner of West Diamond and West Market sts., Mansfield	25,000
Undivided ⅓ of lots in Chicago	16,666
" ¼ of Crestline out lots	500
Lots 35 and 37 in Sherman's addition to Mansfield	1,000
Two lots in Colby's addition	3,500
Lot in St. Louis, Mo.	3,000
" " corner of West Diamond and Bloom	5,000
One-third interest in Island Home property	700
	$135,366

I do not know that I could place any different value on this real estate at that time; what its market value was I am not able to say. My individual liabilities at that time, as near as I can now recollect, were about $175,000, and as surety for others that I then knew of, not including the Mansfield, Coldwater and Lake Michigan Railroad Co., about $30,000. There now appears a note of $5,000 to the Bellville Exchange

Bank, which I am not sure I knew of at that time; if I did not, it would be about $25,000 instead of $30,000; can't tell now when I did first learn of that paper, whether it was before Oct. 1st or not.

	My estimate of the value of stocks would be	$106,000
196	Of real estate	135,366
	Notes, acc'ts, and personal property, say.....	20,000
		$261,366

I afterwards learned that I was surety for the additional sum of some $43, or $48,000, for W. S. Hickox. I considered the Mansfield, Coldwater and Lake Michigan Railroad Company paper provided for by the indemnity it had given to the makers of the notes, and its liability as having received the money for which the notes were given.

152d q. You have been preparing this answer for over twenty-four hours, do you consider it a fair and honest answer to my question?

Ans. I have endeavored to do the best I could do as I understood the question, and as to the time since the question was asked me, Christmas day has intervened.

153d q. In order to make yourself solvent you put in your Mansfield machine stock at par, when it cost you less than nothing, by reason of your management to get dividend to the extent you paid for, and some of it before you paid for it, and when you bought part of it, shortly before Oct. 1st, 1873, at 20c. on the dollar from the sup't, who was familiar with the works and the value of the stock; is that an honest answer?

Ans. I should think so, but should further say, that the stock of $5,000, for which I paid $1,000, was purchased in June, I think, 1872, and that although large dividends had been made, the business of the company, as shown by its books, justified it.

154th q. Was not the financial condition of the Mansfield Machine Works far worse on Oct. 1st, 1873, than in June, 1872?

197 Ans. I cannot say from recollection just what its condition was at those dates, but I should think no worse in 1873 than in 1873, except that in Oct., 1873, the depression of business and stringency in money matters prostrated to a great extent business, and materially interfered with it.

155th q. Then why do you swear up the value of your stock to par in Oct., 1873?

Ans. My recollection is that the books of the company showed assets exceeding liabilities to the amount of its capital stock.

156th q. Were those assets based on the same exaggerated estimate as you estimate yours, and did you make that estimate?

Ans. I suppose that those assets, so far as stock and material go, were estimated at their cost, and as to the real estate and machinery at a price or value that had been fixed upon by the company prior to that time, and as to the bills receivable and accounts, I suppose those were counted while were considered good. Have no recollection of making any estimate myself.

157th q. You say the company was in no worse condition in Oct., 1873, than in June, 1872. Do you mean to say the company was indebted from $180, to $190,000 in June, 1872?

Ans. I do not.

158th q. Do you wish to be understood as saying that the market value of the stock of the Mansfield Machine Works was par? If so, state all your reasons for so swearing. Who offered any amount for it; who desired to purchase it, and all you know about it?

Ans. I do not so wish to be understood.

159th q. What was the market value of it in money, and give your reasons for fixing your estimate?

Ans. I do not know what the market value was; I have no knowledge of any selling Oct. 1st, 1873.

198 160th q. State what you value that stock at when you estimate the total of your stocks at $106,000, and your reasons for fixing that as the money-market value.

Ans. At par. I do not know as I can give additional reasons other than what I have heretofore stated.

161st q. What have you given?

Ans. To my recollection that the assets of the company exceeded its liabilities to an amount equal to its capital.

162d q. Don't you know that the company had no considerable amount of available assets to meet its liabilities, and as a business man how can you swear its stock was worth par, even with your estimate of its assets?

Ans. I think its available assets at that time would be mostly in its bill receivable and accounts and its stock of material and machinery manufactured for sale. I cannot state from recollection what this amounted to. I cannot give any other basis of the value of the stock as I know of other than as I have stated.

163d q. Are you willing to swear that on Oct. 1st, 1873, you could at any place have sold that stock at 20c. on the dollar; if so, to whom?

Ans. I am not.

164th q. You had no control of any part of it at that time?

Ans. I suppose not.

165th q. What was the cash market value of the stock of the Farmers' National Bank on Oct. 1st, 1873?

Ans. I do not know as I can give the market value. I do not know as any was on the market at that time, or that any was sold about that time.

166th q. Could you have sold the Mansfield Gas Light Co.
199 stock on Oct. 1st, 1873, at 40c. on the dollar; if so, to whom?

Ans. I think I could: do not know to whom.

167th q. Could you have sold your paper-mill stock at all; if so, to whom?

Ans. I think I could; do not know to whom.

168th q. You had no control over either of the three last named stocks on Oct. 1st, 1873, had you?

Ans. I think it was all at that time used as collateral security except $500 of bank stock.

169th q. You have said you paid $1,500 for your homestead; that the improvements did not exceed $10,000. You now swear it was worth $30,000 Oct. 1st, 1873; could you have sold it for half of that; if so, to whom?

Ans. I do not know for what it could have been sold at that time. I think it would have been difficult to have sold much property for cash at that time.

170th q. How many different estimates have you put on your homestead since you were adjudicated a bankrupt, and what were they?

Ans. I cannot say whether it is two or three. The first embraced in my schedule I think was $30,000; the one at the time testimony was taken as to its value upon the question of homestead I do not correctly remember, but think it was somewhere from $15 to $20,000 as to what it would sell for in cash at that time.

171st q. When and of whom did you buy the Bell farm and how much money did you pay therefor?

Ans. I bought of Peter Bell in 1867 at $12,000. My recollection is I paid 8,000 in money and assumed a lien upon the place for $4,000.

172d q. That $4,000 has never been paid?

Ans. It has not.

173d q. What has been the cash expenditure by you as to
200 improvements, if any?

Ans. I have not kept any acc't of the expenditures, but think it would not exceed $1,000.00.

174th q. What was the annual income net from that farm for the five years next preceeding Oct. 1st, 1873?

Ans. I am not able to say, but it could not have been much.

175th q. When did you become the owner of the undivided ½ of lot on corner of West Diamond and West Market streets in Mansfield, and what was the cost thereof to you?

Ans. In 1863, perhaps, the lot was purchased and the improvements made in that and the following year or two, and I think I can ascertain the cost to me, but cannot give it now from recollection; will examine and see, and if I can, will give it. On examination I find the lot cost $7,000 and improvements about $20,000. Thus far the whole my int. was ½, or $13,500.

176th q. What was the net income from that building during the next ten years preceeding Oct. 1st, 1873?

Ans. I cannot give it from recollection, but can furnish it. On examination I find the income to be $4,443.00 for the two years. My income would be ½ of that.

177th q. When did you become the owner of the interest in the Chicago property; of whom did you purchase it, and when did you pay for it?

Ans. My recollection is that my purchase was from Judge Granger, about the year 1863, and I think my interest cost somewhere in the neighborhood, including the improvements, of $10,000.00.

178th q. Give the items of the purchase money, and of the improvements separately, and to whom and when paid.

Ans. I think the property was purchased for $18,000, and
201 my third was $6,000.00; was paid to Judge Granger a portion of it down at the time of the purchase, and the balance there was some time on, but I cannot recollect the time or how much. Shortly after the purchase I think 5 tenement houses were erected on the property, and the building that was on it was remodeled, and at a cost in gross as I recollect of somewhere to $7,000 to $9,000; can't tell exactly; and a few years afterwards the city required the city to be filled and walled and a Nicholson pavement to put on two sides of the property, the exact cost of which I cannot state, but I think from 2,000 to 3,000, perhaps some more.

179th q. Who of the joint owners of that property kept the acc't of the items of the purchase of that property and expenditures thereon?

Ans. U. S. Granger.

180th q. Who since his decease, and where is the acc't?

Ans. C. E. Holmes, of Chicago; he keeps a book, as I understand it.

181th q. What was the yearly net income of that property for two years preceeding Oct. 1st, 1873?

Ans. I am not sure as I can give it; I will endeavor to ascertain as near as I can and furnish it; as near as I can now ascertain, on examination my share was about 2,200 for two years.

182th q. When did you purchase, and for what consideration, the ¼ interest in the Crestline property?

Ans. I cannot say in what year. Several years ago, I think, and paid for the whole property $9,000.00. I paid ¼ of the $9,000.

183th q. What had you received on acc't of property sold from the date of the purchase up to time of your adjudication?

Ans. I am not able to say, but think it exceeded considerably over what my interest cost.

202 184th q. Where were lots 35 and 37 in Sherman's addition to Mansfield located, and what has become of them, improved or unimproved, of whom were they purchased and when?

Ans. They are located in the rear of where I am living, and were purchased either of C. T. Sherman or Jas. Moore, several years ago, and my recollection is they cost me about $1,000.00. They are improved by a dwelling-house and outbuildings, and I deeded them to Geo. W. Geddis and Jno. W. Jemison, my att'ys, for services in bankruptcy proceedings.

185th q. Of whom and when did you purchase the St. Louis, Mo., property, and what did you pay for it?

Ans. I purchased it of S. W. Eels some 3 or 4 years ago, and my recollection is it cost me about $2,500.00.

186th q. Is the St. Louis property in the schedule, and if not, how did that happen?

Ans. I think it is not in the schedule. I sold it after the 1st of October, and before proceedings in bankruptcy.

187th q. To whom did you sell it, and for what?

Ans. To J. A. Jones, I believe; the price was about $3,000.00.

188th q. Were there any encumbrances on it when you sold it; if so, what?

Ans. I had no knowledge of any.

189th q. You mention in your answer this morning two lots in Colby's addition at $3,500; are these lots improved?

Ans. There is a dwelling-house and outbuildings on one of them.

190th q. Why are they not in your schedules?

Ans. I did not own them when the schedules were made.

191st q. What had you done with them?

203 Ans. I had sold them to J. A. Jones.

192d q. At the time you sold this property to Jones how much was you indebted to him, and what was the consideration of the same, and when was it due?

Ans. The am't was in the n*a*borhood of $5,500 for borrowed money and my recollection is that it was due several months after that.

193d q. What rate of interest was you paying on that borrowed money?

Ans. I think it was 10 %.

194th q. How long had you had it?

Ans. I cannot say definitely, but I think I got it in the spring of 1873.

195th q. You mention as part of your real estate lot on corner of West Diamond and Bloom st., Mansfield; please state of whom and when you purchased it, and fully the terms on which you purchased it?

Ans. I purchased it of B. Burns, adm'r of J. H. Dull, dec'd, I think in the latter part of 1872, $1,000 down and $1,000 a year for four years, with interest at 6 per cent.

196th q. How much of that purchase money had you paid?

Ans. $1,000.00.

197th q. And the remaining with accruing interest was unpaid on Oct. 1st, 1873, and when you were adjudicated a bankrupt, was it not?

Ans. It was.

198th q. What amount of your debts and liabilities were due on Oct. 1st, 1873?

Ans. I will answer this upon examination, but can't without. On examination, of strictly commercial paper, none that I can recollect of. Of other debts but not dividend, say about $40,000, including Beverstock's and Barbour's estate.

199[a] q. Please state the total amount of your debts as
204 principal and surety, and all your liabilities which existed on Oct. 1st, 1873, giving the names of creditors, origin and consideration of the indebtedness, how evidenced, when interest commenced, and rate thereof when same matured, giving each and every item; and please separate your indebtedness for borrowed money from other liabilities.

Ans. I am not able to make a correct detailed statement of the items as they existed on the 1st day of October, 1873; I do not think it possible to do so, for I am not able to find the date from which to make a statement of these matters at that date which would be accurate or correct.

199[b] question. Please state all the items of your indebtedness called for in the foregoing question, so far as you have any books, papers, or memoranda upon the subject?

Ans. I would have to refer to my schedule in bankruptcy; I have no other memorandum other than such papers as I made memoranda on at the time I was preparing my schedules. I might find some of those, but they will be merely the items that went to make up the schedule.

199[c] q. Have you not ascertained other debts and liabilities of yours since making your schedule?

Ans. I do not recollect of any.

200th q. When did you become administrator of the estate of Justice S. Barbour, dec'd?

Ans. I think it was in 1865.

201st q. State the several amounts of money you received from that estate, from whom, when, and the several items thereof, the
205 amount paid out, the times when paid, and to whom by item.

Ans. I am not able to answer without taking time. The witness answers: A correct statement of these items is contained in the acc't, and vouchers therewith, filed in the probate court of Richland County for settlement of the estate, and which has been there settled, and I am not able to make an accurate statement of them.

201[b] question. Who spoke to you about filing the last acc't immediately prior to its being filed?

Ans. I do not recollect whether it was my own action or whether Mr. Dunn suggested, as the matter was being closed up, a final settlement might as well be made. I have no distinct recollection how it was.

201[c] q. Did you not have a conversation with Mr. Dunn, immediately prior to your making the mortgage, upon the subject-matter of the estate?

Ans. I did.

201[d] q. Who mentioned the subject-matter of giving the mortgage first?

Ans. I cannot say.

201[e] q. Had you a talk with any party except Mr. Dunn at the time or shortly upon its execution, in reference thereto?

Ans. I think not; have no recollection of it.

201f q. If you regarded yourself as solvent, why did you give this mortgage?

Ans. The laws of this State require that such funds should be invested in either U. S. or State securities, or be secured by mortgage on real estate, and it was done in order to comply with the law.

201g q. Where do you find any laws requiring an administrator to thus invest the estate?

Ans. I do not know that there is any such law.

206 201h q. How long had you been holding the funds of this estate as administrator beyond the term fixed by the law for the filing of your final acc't?

Ans. I am not able to say.

201i q. About how long?

Ans. I think a portion of the funds came into my hands as early as 1865 or '66, and my impression is all of them within two or three years from that time.

201j q. Then you would understand the laws as requiring you to make the final acc't and pay over the money to the heirs-at law and legal representatives, would you not?

Ans. After paying the debts and selling the estate it would have been my duty to have filed a final acc't.

201k qu. Was there anything to prevent you from filing your final acc't for some three years before you did? If so, what?

Ans. Do not recollect of anything.

201l ques. Then, if for the last 3 years you were prepared for and by law required to file your final acc'ts and pay over the money, why did you not do so, and thereby have them invested in the manner in which you say the law requires funds of that sort to be?

Ans. I do not know any reason that now occurs to me.

201m qu. During that time the money in your hands was not invested, as you say the law requires it to be, was it?

Ans. I suppose it was while in my hands as adm'r, before filing the acc't and settling with the guardian.

201n ques. Then please state definitely in what the money belonging to said estate in your hands was invested during the three years last before the filing the acc't?

207 Ans. I was using it in my business, as I was my own funds and other funds that I might have borrowed.

201o ques. Was any of it during that time invested in government bonds? if so, how much, and when?

Ans. I am not able to answer that question definitely; my impression is that a portion of it was at one time.

201p ques. When and to whom were they disposed of?

Ans. I cannot recollect.

201q ques. Are you sure that any portion of this money was invested in government bonds? if so, of whom did you procure them?

Ans. I am not sure.

201r ques. Have you any mem., book, acc't, or paper writing that will show any such investments or anything on that subject?

Ans. I do not know as I have.

201s ques. Had you any money or the means with which to procure money to pay off the amount due this estate at the time you gave the mortgage?

Ans. I did not have any money at the time, but if the widow, for herself and as guardian, had requested or asked the money to be paid over, I think I would have been able to have raised the money.

201[t] ques. How?

Ans. By borrowing it.

201[u] ques. You have stated that all your stocks, together with almost all your notes and obligations, were held by your creditors as collateral, and your homestead was mortgaged for a large amount, mortgage upon Colby and Giddes property, and on the Bell farm and the Chicago property; state how you think you could have borrowed the money.

Ans. There was not any mortgage upon the Chicago property, and
208 I think the value of the other real estate was amply sufficient over the liens then on it to have been 1st-class security for that amount, $24,000.00.

201[v] ques. Had not the panic set in, and was it not very difficult for parties to procure money to meet the ordinary demands?

Ans. The panic had set in east, and it was difficult, and the 1st Nat. B'k of Mansfield, Ohio, had failed.

201[w] ques. Had not the panic set in in Mansfield, and had not public meetings been held to consult about measures to sustain the banks, and had not banks refused to pay over $50.00 at a time to depositors?

Ans. My recollection is, that there was nothing in the shape of a panic here that caused a run upon the other banks of the place, but meetings were held both by bank officers and the public, and, upon consultation, it was deemed most advisable to adopt the same rule in the banks that had been adopted in other cities, to pay certain amounts on depositors' checks.

201[x] ques. You visited New York in fall of 1873; what time did you go and what time did you return?

Ans. I am not able to give the day of my going or my return; think it was about the middle of October; perhaps a little before that I went there, and my recollection is that I returned inside a week.

201[y] ques. What hotel did you stop at in New York on your arrival?

Ans. I think the St. Nicholas, and if the hotel register shows that I arrived the 11th, I should say it was correct.

201[z] ques. Did you sell or dispose of in any form whatever, directly or indirectly, while in New York, any bonds, policies, or other papers or valuables? if so, what?

209 Ans. I did not dispose of any bonds, or any papers, or any other things of any value except the surrender of life policys.

201[zz] ques. State the facts in regard to surrender of life policys.

Ans. My recollection is, I left a policy with W. L. Strong, an arrangement having been made by myself with the company, and that he concluded the negotiation shortly afterward and sent me the funds.

201[zzz] qu. What amount of funds did you realize from the transfer, and what did you do with the same?

Ans. I think the surrender value was in the naborhood of $1,700.00; some $200 of that it took for the qrs. premium, and the balance I am not able to say definitely how it was used; but it was used in expenses, and in paying whatever I might have been called on for, except $500, which I paid A. L. Grimes.

201[zzzz] q. What Co. was policys in?

Ans. I think it was the Globe Life Ins. Co. of New York.

201[1]. Was the disposition of this policy your object in visiting New York?

Ans. Not fully. My object was to ascertain the condition of money matters, so that in case I should need more funds, I could arrange for here or command, if necessary, I could get it, and thus save myself from sacrifice or discredit in meeting papers that might mature.

201². For what purposes did you anticipate you would need funds beyond your power to procure here?

Ans. At that time banks in this section of the country were not making loans, and private individuals were not ready to loan money, and I had paper that would mature and some that was due, and did
210 not know but that I would be called upon to pay it, and if so I desired to be prepared.

201³ q. Had you a conversation with W. L. Strong on this visit to New York, as to your financial condition?

Ans. I do not recollect that I did.

201⁴ q. Did you not say to Mr. Strong, while in New York on this visit, "I am a ruined man; I have been broken up by Hickox's operations," or in substance this?

Ans. I do not recollect of any such conversation; there may have been something said of Hickox failure, and that I would probably loose by it; very likely some such conversation as that occurred, but I do not recollect it.

201⁵. Q. Had you met with any losses between the time of giving this mortgage and your visit to New York; if so, what?

Ans. I do not recollect of any, except as I learned of additional amounts I was liable for for Hickox.

201⁶. Q. You say you paid $500 of the money realized out the surrender of the policy to Mr. Grimes; were you indebted to Mr. Grimes; if so, what am't; how was the debt evidenced, when and for what?

Ans. I think about Sept. 1st, 1873. I got of him $600, my recollection is, and it was evidenced by either note or check.

201⁷. Q. What were the terms of the check, and upon what drawn?

Ans. If it was a check it was drawn upon Farmers' Nat. B'k, and I cannot say whether it was a time check or not.

201⁸. Q. Had you the funds in the bank to honor the check then or at its maturity?

Ans. I do not know the condition of my acc't at the time I gave the check.

211 201⁹. Q. Do you wish to be understood as saying you borrowed money, and had funds to honor the check at the time, and has it been paid?

Ans. No, sir; if a check it was time, or was to be called for when wanted. There is some $5,000 unpaid.

202d q. I see by the examination and schedule of Henry H. Colby, your son, on Dec. 20th, 1873, when the schedule was made, he was indebted as follows: Farmers' National Bank, $363.60; Farmers Nat. B'k, $8,800; 1st National Bank, Tiffin, O., $3,000; Farmers' Nat. B'k of Mansfield, Ohio, $10,000.00; Richland Nat. B'k, $3,000; Farmers' National B'k again, $10,000; Thos. Wellett, adm'r of R. McDonough, $1,000. State whether or not you are liable on any of said claims as principal or surety; if so, on which surety and principal respectively; when the debts were contracted, consideration thereof, and rate of interest paid, and, so far as you know, what was done with the proceeds.

Ans. I cannot answer without taking time to examine.

The witness further answers:

I am principal on the Farmers' Nat. Bank, Aug. 21st, 1873, $10,000; Richland Nat. Bank, $3,000; Farmers' National Bank, $10,000; and surety on the 1st Nat. B'k, Tiffin, Aug. 23d, 1873, $3,000, and Willett, adm'r, $1,000. The consideration was money, the rate of int. I think was 10 %, and, to my recollection, so far as I am principal the funds went to my acc't in the bank; as to the others I cannot say. On read-

ing my testimony before signing, it occurred to me that while in N. Y. in Oct., 1873, I surrendered a life policy in the N. Y. Life, and received some $2,900—I cannot state definitely—and I used the funds in my ordinary business and transactions.

203d question. Please give the items of money borrowed of A. B. Beverstock, the respondent, within two years next preceeding
212 your adjudication, with dates, amounts, terms, and rate of interest.

Ans. I think I can answer by taking time. I borrowed, July 6th, 1872, $6,000 3-20 bonds, Sept. 26th, 1873, $10,000 5-20 bond, which I was to return to him in like bonds, he to be entitled to the gold interest at rate of 6 %.

204th q. State whether, about the time you ceased to be cashier of the Farmers' National Bank of Mansfield, you had occasion to borrow money to make up a deficiency which existed in the bank of which you were cashier; and, if so, for how long a time, and for what amount.

Answer. I did not.

205th q. Did any one?

Answer. Not to my knowledge.

206th q. Did that occurrence never take place?

Ans. At the time that there was an examination of the bank, there were some bonds which had been counted as cash, and some other items, I do not recollect what or how much, but all of which were good, that it was thought best should be taken up, and were about to be when the funds were returned. I afterwards borrowed money, and my recollection is that I got some of L. B. Sturges. I cannot say for how long, desiring to take up all my indebtedness at the bank as well as elsewhere that was due.

207th q. Is L. B. Sturges the only one you got money of on that occasion?

Ans. The money referred to in the former answer, to take up bonds and other items, was got at the Richland National Bank, but not used and returned to them.

213 208th q. How much did you get of S. B. Sturges?

Ans. My recollection is it was $10,000.

209th q. State what bonds they were, and all the items that were counted as cash.

Ans. I do not know as I can give the name of the bonds, nor am I able to give the items.

210th q. Whose bonds were they and whose items of indebtedness counted as cash?

Ans. In one sense of the word the bonds belonged to the bank, they having been left there by Mr. Purdy, under an arrangement that he was to take them up when requested; I am not able now to say whose items of indebtedness.

211th q. State more fully what bonds they were and what amount of them.

Ans. As I said before, I do not think I can give the title or name of the bonds, but they were railroadbonds, and I think, to the best of my recollection, they were called Chicago, Iowa and Nebraska, or something like that, and the am't was some 6,000 or 8,000, but I cannot be positive how much.

212. q. If these were Mr. Purdy's bonds why did you borrow money to take them up?

Ans. Mr. Purdy and I had had several conversations, as well as other members of the board, about his taking them up, but for some reason, I

do not know why, he had omitted to take them up, and afterwards he did take them up.

213th q.

214th q. When was the debt of Mrs. Remyan, stated in your schedule, contracted.

Ans. I connot state definitely, but my best impression is that it was in 1869 or 1870.

214 215th q. Was it for borrowed money, and, if not, state the consideration of the debt?

Ans. Borrowed money.

216th q. When was this debt in favor of the Dennison University contracted, and what was the origin and history of that.

Ans. At the time named in my schedule I endeavored to ascertain the date, and presume I have it correct; it appears to have been in the summer of 1872, and was for borrowed money; I had made a subscription to the endowment of the university some time prior to that date, and my recollection is that the amount was $2,000.00; for which I had given a note, and out of this loan I took that note up and paid up.

217th q. Now please examine your Schedule A, No. 2, debts purporting to be contracted in 1873, and state what are original debts, then contracted, and what are renewals. You find Beverstock, Glass, Kimball, Thompson, Mrs. M. Furguson, Keiser, Knox Co. National Bank, Strong, Farmers' National Bank of Mansfield, Mrs. Remyan, A. L. Grimes, Henry Colby, Vanderbilt, L. M. , 1st National Bank of Wooster, Exchange Bank of Monroeville, Richland National Bank of Mansfield, William Byrd, 1st National Bank of Galion, all purport to be contracted in the year 1873, with some that have no dates, to wit: Regly Ayres et al.; and state definitely.

Ans. The following are debts of 1873: Beverstock's, Kimball, Knox Co. National Bank, Grimes, Colby, 1st National Bank of Wooster, Exchange Bank of Monroeville, 1st National Bank of Galion, Wm. Byrd. I think I am correct on these; and $10,000 of the Farmers' Na-

215 tional Bank, I think, and $800 of the Glass debt were contracted in 1873. Those of Thompson, I think, $800 was in 1873, but I am not positive. Furguson, $1,100, was a renewal, and I think Keiser. I am not positive as to Strong. The others of the Farmers' Bank were renewals, and Mrs. Remyan, Vanderbilt, Richland National, were renewals.

218th q. What proportion and which ones of the debts contracted in 1873 were for borrowed money?

Ans. I think all except the Galion Bank.

219th q. What was the Galion Bank debt for?

Ans. There were funds in my hands belonging to myself and other parties who were owing to the Galion Bank, and I took up the indebtedness and gave my paper.

220th q. What was done with the Grimes money borrowed on Sept. 30th, 1873?

Ans. I am not positive, but think it went to my credit in Farmers' National Bank.

221. q. If it was ever used by you, state for what purpose.

Ans. I am not able to state what particular application was made of it except in my business affairs.

222d q. Have you no memory as to what was done with the money?

Ans. I have not.

223d q. What was done with the Beverstock money, borrowed on the 26th day of September, 1873?

Ans. My recollection is that $8,000, or about that sum, was used to take up two checks, one for $5,000 and other for $3,000, and the balance went to my credit in the Farmers' National Bank.

224th q. On what paper was the money borrowed of the Na-
216 tional Bank, of Wooster, borrowed on the 5th day of September, 1873?

Ans. My own paper with the endorsement of W. S. Hickox, is my recollection.

225th q. For what purpose was the money borrowed and used?

Ans. My recollection is that I had some liability that was due, and I am not able to say what, or to what, that was got to pay; it may have gone to my cr. in Farmers' National Bank, but my impression is otherwise. It was borrowed to pay pre-existing debts, but to whom I cannot state.

226th q. Then you borrowed money, according to your statement, in the year 1873, to the amount of about $50,000; state what was done with the same.

Ans. It would be utterly impossible for me now to tell how it was used; my impression is that some portion of it was to pay debts for money that had been borrowed of other parties prior to that.

227th q. Then you cannot account directly for any portion of it, can you?

Ans. I cannot tell; it is beyond my power to remember now what disposition I made of it. I used it in my business.

228th q. What business?

Ans. As I understand, portions of it, I cannot say how much, were used in paying liabilities as stated in a former answer, and liquidating such liabilities as I may have incurred or matured. I was continually using money in my business affairs, and I don't know as I can more fully particularize.

229th q. During that year you were working under a salary
217 as financial agent of the Mansfield Machine Works, were you not?

Ans. I had no definite arrangement as to time or salary, but the larger portion of my time was put in there.

230th q. Then you were engaged in no definite and distinct business in 1878, were you, outside of your employment there?

Ans. I was as far as my time was occupied with the Mansfield Machine Works; bal. of time was attending to my other business matters, private and personal affairs.

231st q. When was the subscription made to the Dennison University, am't and terms?

Ans. I should think in the vicinity of a year, may have been two years, prior to the time it was paid, and the reason it was not paid at the time the subscription was made was that it was to the endowment fund, on which they wanted the interest merely; the amount was, I think, $2,000.00, and terms was a note. Do not recollect whether there was any time given or not, and rate of interest was 6%.

232d q. Was not the loan of Mrs. Remyan the retaining by you, and note given by you, for am't due her from you, as adm'r of her husband's estate?

Ans. It was not.

233d q. You had pressing needs for money when you borrowed the money of Mr. Grimes, knowing his circumstances, had you not?

Ans. I do not now recollect of anything in particular; my impression

is that Mr. Grimes said he had some money which he did not expect to use for a time, and would like to have it bring him something; I have not any distinct recollection of the conversation or circumstances now.

234th q. Have you a recollection of what you said to him
218 at the time you procured it?

Ans. I have not.

235th q. Who spoke of it first?

Ans. I am not able to say.

236th q. You stated to Mr. Beverstock, at the time of the loan from him, you were greatly in need of money, and must have it, or in substance, that did you not?

Ans. I think in substance that I had use for some money and was anxious to get it.

237th q. Yet you cannot now tell what that object was?

Ans. As before stated, I wished to take up two checks amounting to about $8,000.00, which were a demand loan, and was called for, and I desired to take them up.

238th q. Who were these demand checks originally given to?

Ans. I think the one of $5,000 was at the 1st National Bank of Mansfield and the one of $3,000 to the paper mill.

239th q. Had these checks been paid by the Farmers' National Bank at the time when you made this loan, and, if so, how long before?

Ans. I think not. They had been running, at the time I paid them with Beverstock money, I should say some weeks.

240th q. What were these checks given for?

Ans. Money borrowed.

241st q. Do you know whether the holders of these checks had received credit with the Farmers' National B'k prior to their being lifted by you?

Ans. I do not know, but I presume not from the fact that the money was called for on the evening or day prior, and I said I would take
219 them up the next day, and when I went into the bank the next day the checks, were on the counter, and I paid the amount and destroyed the checks, and there was no entry.

242d q. Who called for the money the day before?

Ans. I have an indistinct recollection that the cashier of the 1st Nat. Bank sent me a note, either through the post-office or by one of the boys of the bank, saying that he would want the money on the check, and I told him he should have the money on the next day. The other one, Mr. Hade said he would want to use the money; I mean Jacob Hade, who was sec'y and t'r of the Mansfield Paper Mill. The checks were both on the Farmers' National Bank, and one was negotiated to the First National Bank and other to the Paper Mill Co.

243d q. Did you pay interest, and, if so, what rate?

Ans. Can't tell the rate, but paid the interest.

244th q. (Left off).

Ans. " "

245th q. " "

Ans. " "

246th q. How much stock did you have in the 1st National Bank; when did you dispose of it, to whom, and for what?

Ans. I had $10,000 of stock; cannot say just when I disposed of it, but should say some two years prior to the failure, to Wm. Hoffer; what my recollection is, about 20% premium, perhaps a trifle more.

247th q. At the time of the borrowing of the money of Grimes, Bever-

stock, and others, during the summer and fall of 1873, what was your income and from what sources?

Ans. Do not know as I can tell the amount of income, but was receiving rents on the property on Main st. known as the Colby and
220 Geddes Block, Chicago and St. Louis property, dividends on bank, Gas Co. stock, and Mansfield Machine Works stock, and whatever was allowed me for services at the Machine Works.

248th q. State the net income from each of these sources during the year 1873.

Ans. From Colby and Geddes block, about..... $1,100 to 1,200
" Chicago property for two years 1871 & '72. $2,200
" St. Louis " 400 00
" Bank stock $1,050 00
" Gas Co. stock..... $2,050 00
" Mansfield M. Works stock..... $7,000 00
" Services in M. M. works..... $2,000 00

249th q. Did you receive that amount from these sources?

Ans. I am not positive, but my impression is I did.

250th q. Then what resources had you to meet these large demands for borrowed money?

Ans. I was buying and selling and trading in property and stocks.

251st q. Do you wish to be understood as saying you expected to make it by trading and buying and selling?

Ans. Do not know any other way.

252d q. You say in one of your answers that none of your paper that was strictly "commercial paper" was due; in the first place what do you call "commercial paper"?

Ans. Papers borrowed at banks expected to be paid at maturity.

253d q. Now please state what paper was due on 1st day of October, 1873, as your schedules do not show.

Ans. I don't know as I can; I think there must have been some that was due at that time, but to parties who did not want it, and I do
221 not recollect that was called for.

(Answer obj'd to as not responsive to the question at all.)

254th q. You say you are unable now to state what of your debts were mature on 1st day of October, 1873?

Ans. I do not know, and know of no way of ascertaining without finding the parties and looking at the obligations.

255th q. When was the debts named in your schedule in favor of W. H. Regly and the widow Ayres contracted, and for what?

Ans. I should think in the year 1872, and for money borrowed.

256th q. When did you commence signing paper for Williard S. Hickox?

Ans. I think the 1st paper I signed for him was when he bought the Woodruff stock, and think this was in fall of 1867, or thereabout. Do not recollect definitely; think it was in fall of 1867 or spring of 1868.

257th q. What paper did you sign for him at that time?

Ans. I signed some notes, but do not think I can tell to whom they were payable, but have an impression that one of them was to Jno. C. Larwill, of Londonville, Ohio.

259th q. What was the aggregate am't of liability evidenced by these papers?

Ans. I cannot say; have no distinct recollection how much; might have been at that time from $10 to $20,000.

260th q. You have continued to bail him and indorse for him up until the failure of the 1st National Bank, have you not?

Ans. I have.

261st q. He likewise indorsed for and bailed you during the same time, did he not, whenever requested?

Ans. It was only occasionally.

222 262d q. What paper did you sign for him at the time he purchased Woodruff stock in connection with that transaction?

Ans. Hickox came to me and said Woodruff would sell his stock. He said he knew where he could get the money, but in mean time must raise the money, and promised me, whenever he used my name, he would pledge bank stock; and I do not know how much I was on exactly, or to whom. He said he could place the stock after he got it.

263d. About how much did you contribute toward the erection and completion of the Baptist Church in Mansfield, Ohio?

Ans. I do not recollect, nor can I tell the exact amount; but my recollection is, including the lot, it was $8,000 to $10,000.

264th q. About when was that paid out?

Ans. I think it commenced in 1859, and run through a period of two or three years; some of it, I think, may have been longer.

265th q. You assumed the Bell note to Dickson on the Bell farm; what rate of interest did you pay Dickson?

Ans. I think it was 10 %.

266th q. Did you ever make an estimate as to am't of interest you were paying on borrowed money at any time in these last two years?

Ans. Have no recollection of doing so.

267th q. Would the books of the Farmers' National Bank show if you carried a check or note of Mr. Hickox for any amount as an accommodation to him?

223 Ans. It would not, unless there was some memorandum made or entry.

268th q. If you carried Mr. Hickox' check or similar papers, would it be customary to put it on the books?

Ans. Not generally. I think the teller sometimes, in balancing his daily cash, would make memorandum showing what the cash was composed of; sometimes coupons, sometimes checks, sometimes draft.

269th q. When was the debt of Harvy Hall of $4,800 contracted?

Ans. I should think it was in 1872.

270th q. You say the following claim in your schedule, purporting to be debts contracted in 1873, to wit, Keiser, Strong, Farmers' Bank, Vanderbilt, and Mrs. Remyan, were renewals; please give the dates when same was contracted.

Ans. I should think Keiser's the year before Strong's, one perhaps two years before; the Farmers' National Bank, I should say a portion of it the year prior, and balance, I think, in 1871: the Vanderbilt I should say in 1872; and Mrs. Remyan, cannot say positively, perhaps in 1869 or 1870.

271st q. Is the other indebtedness purporting to be contracted previously to 1873 the real dates of the contraction of the debts?

Ans. I have to say that at the time I made the schedules I used my best endeavors to get the correct dates, and believe them to be correct.

272d ques. You were paying 10 % int. on all of this indebtedness, were you not? If otherwise, please state which ones you were not.

Ans. I was not. The indebtedness to Beverstock, except $2,000,

224 Jacker and Reed, Strong, Dennison University—these debts were not bearing 10 %. Beverstock's and Strong, 6 %, gold, interest; Denison University, 8 %; and others 6 %.

273d ques. What was the origin and history of this debt to H. Culbertson, mentioned in the schedules?

Ans. It was borrowed money of H. Culbertson by hand of R. H. Rowland. Henry Rowland told me he had some money, and he said it belonged to his cousin, H. Culbertson.

274th q. You were present at all the examination of this case, and did you not counsel and advise in the taking of testimony?

Ans. I have been present during the most of the time, but have neither counseled or advised.

(The signatures to the two Exhibits A and B are admitted to be the genuine signatures of H. D. Keith, prob. judge of Richland County, Ohio.)

HUBBARD COLBY.

Testimony of A. Scattergood.

A. SCATTERGOOD, of Mansfield, Richland County, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause, as hereinafter certified, deposes as follows:

1st question by A. K. Dunn. Please state where you reside, what business you are engaged in, how long you have been in such business, where your business house was located on October 1st, 1873, and whether you had a general acquaintance with the people of Mansfield, Ohio.

Ans. I reside in Mansfield, Ohio, am engaged in the mercantile business, and have been for some seventeen years in Mansfield, Ohio; my business house on Oct. 1st, 1873, and for a number of years prior
225 thereto, and now is, located on Main street, northwest corner of the public square, and one room south of the corner room; and have a general acquaintance with the people of Mansfield, Ohio.

2d ques. Please state if you are acquainted with the defendant Hubbard Colby; and, if so, how long have you known him?

Ans. I have known him during all the time I have resided in Mansfield, during the seventeen years.

3d ques. Please state if you remember the occurrance of the failure of the 1st National Bank of Mansfield, O., and whether you heard any reports in Mansfield, about the time of said failure, unfavorable to the financial condition of Hubbard Colby; and, if so, what were they and when with reference to said failure did you first hear them?

(Objected to by L. B. Matson, for reason it requires the witness to give a construction to what he heard.)

Ans. I remember the occurrence of the failure of said bank; I do not remember of Mr. Colby's name being mentioned immediately after the failure as being involved. My recollection of dates is somewhat imperfect, but I am able to refresh my memory from outside matters; for instance, a visit I made to Canton at a convention, as late as the 22d of October, 1873. At that point a number of friends I met had a good many enquiries to make of persons and affairs here, and I can call to mind answers I made, in part at least. I remember my reply to Mr. Colby's was that so far as Mr. Colby's affairs were concerned it was hopefull he would go through. I find in keeping a daily record of events that on Oct. 27th, 1873, there was considerable talk with reference to Colby as involved with Hickox.

4th ques. What was the financial reputation of Hubbard Colby
226 in Mansfield, before and up to the time of the reports which occurred after the failure of said bank, as to being solvent or insolvent?

Ans. I should say he was regarded as a sound and solvent man.

Cross-examination:

1st ques. (By L. B. MATSON.) To whom have you recently been talking to about the subject matter of which you have testified?

Ans. Mr. Davis (Henry P. Davis) asked me if I knew anything about the date when Mr. Colby was reported insolvent.

2d ques. Were you interested in either of the banks of Mansfield, as a stockholder or officer, or in the Mansfield, Coldwater and Lake Michigan Railroad Company, as an officer, at the time of the failure of said 1st National Bank or Hickox?

Ans. No, sir.

3d ques. You were not in the habit of talking on the streets or mingling with the people generally aside from your close attention to your business in your store-room, were you?

Ans. Very moderately outside of my business room.

4th ques. You had no pecuniary interest in Mr. Colby's welfare in the fall of 1873?

Ans. Not a dollar.

5th ques. Did you not hear upon the streets and elsewhere, prior to 1873, of Mr. Colby's irregularities in the Farmers' National Bank, and rumors as to why he retired from the cashiership?

Ans. I cannot fix any date; I mind of hearing rumors that the bank was managed irregularly, but cannot fix any date; if I had the time he retired from the bank, I might possibly. (The witness being in-
227 formed it was in March, 1871.) I would think it was possible I heard the rumors before or about the time of the bank failure, but am not definite as to dates.

6th ques. Are you willing to say you did not hear of these rumors and reports until two years after Mr. Colby's retirement from the bank.

Ans. I think I heard of irregularities earlier, but as to the nature of them I did not.

7th ques. What is your memory as to when you did hear of the nature of them?

Ans. I cannot fix dates. I must be indefinite; cannot fix dates.

8th ques. Your opportunities for hearing and learning of public opinion as to Mr. Colby was such, that you did not even hear of his executing a mortgage to his sister-in-law, Mrs. Barbour, on the 1st day of October, 1873, for about $25,000.00; also a few days prior to that, to wit, Sept. 26th, 1873, to H. B. Beverstock, for $10,000, in bonds, or a consideration of $12,000 in currency, and also a mortgage to A. B. Beverstock, on Oct. 8th, 1878, for $8,000 more, or anything on the subject?

Ans. I did hear of mortgage being executed, but did not know dates or amounts. I rather think the $18,000 to Beverstock was familiar to me; the other I did not hear.

9th ques. Then when did you hear of these acts with reference to the time of the execution? State if you can remember.

Ans. Cannot fix the dates; I merely remember of hearing them at the time or after Mr. Colby going into bankruptcy.

10th ques. Do you wish to be understood as saying that you did not hear of these things until Mr. Colby went into bankruptcy?

Ans. I have no more definite way of fixing the date than that.

11th ques. When did he go into bankruptcy?

228 Ans. I should say early in 1874.

12th ques. You say that $18,000 mortgage to Beverstock was familiar to you; how did you become familiar with that fact?

Ans. I cannot say definitely.

13th ques. If your early records of events show the failure of 1st Nat. B'k of Mansfield, Hickox, and McMann; if so, when was it?

Ans. Friday, Sept. 26th, 1873.

14th ques. Did you make any memorandum of making a record of these large mortgages by a man you supposed to be solvent?

Ans. I do not think I did. This book closes with December, 1873.

15th ques. Did you make any record of the events following the failure of the bank, to wit, transfer of all of Hickox and McMann's property to the bank; meeting of the bank officers and citizens to devise means to prevent a run on the banks; the meeting of bank officers the evening and Sunday following, &c.; if so, what?

Ans. On Saturday, 27th of Sept., 1873, I record: "Run on Richland National Bank; paying only $50.00 checks; good deal of excitement all day and much gossip." On Sunday I say: "People's minds more taken up with bank excitement than religion." Monday I record: "Still some excitement and still some run on Richland Nat. B'k." On Tuesday, 3d, I record: "Every day new developements concerning Hickox and the bank;" and that kind of record runs through October and considerable time. No reference to it.

229 16th q. Are you willing to swear from your memory that you did not hear talk and rumors immediately following failure of the 1st Nat. Bank, Hickox, and McMann, that Mr. Colby was largely involved as an indorser for Hickox, individually and on acc't of the Coldwater Railroad.

Ans. I would not swear that I had not heard rumors; cannot fix dates definitely. I find the date when I first mention his name. I would not swear there were no rumors previous to that.

17th ques. Are you willing to swear you did not hear of Colby having borrowed $5,000 of Mr. Grimes shortly before the failures aforesaid?

Ans. I heard of that loan being made, but did not hear of the date until recently. Heard of the loan, but did not hear of the date of the loan until recently.

18th ques. Did you not hear of the loan being made and complaints of the manner of being procured about the time of the failure.

Ans. I heard, after the failure, or about that time, of the loan being made, and that it was thought it was not a transaction, but the date of the loan I did not hear until recently.

19th ques. Are you able to state from memory the aggregate donations to the Baptist church, of which you are a member, made by Mr. Colby.

Ans. I cannot. I can give his yearly subscription for several years, about $200 a year.

A. SCATTERGOOD.

Sworn to before me, and subscribed in my presence, March 11, 1875.

HENRY C. HEDGES,
Register.

Testimony of Geo. W. Blymyer.

Also GEO. W. BLYMYER, who, also being duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposes and says:

230 1st question. (By *Geo. W. Blymyer.*) Please state where you reside, what business you are engaged in, how long you have been engaged in such business, where your business house is located, and where it was on Oct. 1st, 1873, and whether you had a general acquaintance with the people of Mansfield, Ohio.

Ans. I reside in Mansfield, Ohio, and am engaged in mercantile business in Mansfield—stoves, tin ware, &c.—and have been for over eleven years for myself, and my business room was, on Oct. 1st, 1873, for years before and since, on the corner of the public square in Mansfield, on Main st., and have a general acquaintance with the people of Mansfield.

2d ques. Please state if you are acquainted with the defendant, Hubbard Colby, and, if so, how long have you known him?

Ans. I am, and have known him 30 years.

3d ques. Please state if you remember of the occurrence of the failure of the 1st National Bank of Mansfield, O, and whether you heard any reports in Mansfield, about the time of the said failure unfavorable to the financial condition of Hubbard Colby, and, if so, what were they, and when, with reference to said failure, did you first hear of them?

(Objected to by L. B. Matson, for the reason it requires the witness to give a construction to what he heard.)

Ans. I do remember of said occurrence. It is pretty hard to separate rumors I heard from conclusions I jumped at from my knowledge of the intimacy of Colby and Hickox, and that their business was so connected that if one went the other would have to go, but I should think it was over a week after that before I heard any rumors. The rumors were that Colby and Hickox were on each other's paper for a large amount.

231 4th ques. What was the financial reputation of Hubbard Colby in Mansfield, before and up to the time of the reports which occurred after the failure of said bank, as to being solvent or insolvent?

Ans. He was solvent before.

Cross-examination:

1st ques. (By L. B. Matson.) Have you been enquired of recently on this subject-matter, and, if so, by whom?

Ans. Yes; Henry P. Davis.

2d ques. (By same.) Was it not generally talked of and reported in Mansfield, for some time prior to said failure, that Hubbard Colby and Williard S. Hickox were very intimate in their social and business relations?

Ans. Yes.

3d ques. Was it not also talked of publicly, prior to their failure, that they were bail and indorsers for each other on business paper, and jointly liable with each other for a large amount on account of the building of the Coldwater Railroad?

Ans. Yes.

4th ques. Was it not also generally talked prior to their failures that if one failed the other would almost unavoidably fail also?

Ans. Can't say that this was talked of generally.

5th ques. Did you not talk with various parties in Mansfield, immediately on hearing of the failure of the said bank and Williard S. Hickox, that if Hickox's failure was as bad as reported he would carry Colby with him, on acc't of their intimate business relations?

Ans. I made it a point to talk about not anybody at that time, and can answer the question by saying no. There were rumors about almost everybody at that time, and I made it a point not to talk on that subject.

232 6th ques. You heard others talk on that subject immediately after these failures, did you not?

Ans. I cannot say definitely that there was any talk about Mr. Colby for at least a week after.

7th ques. When the talk commenced it was quite general, was it not?

Ans. Yes.

8th ques. Are you not indefinite as to the precise time it did commence?

Ans. I think I have answered that. I do not think that there was any talk about Mr. Colby for a week; may have been longer.

9th ques. Are you able to state the day and date of said failures from memory?

Ans. Not the exact date; think it was the last week in September; about the 26th; somewhere along there.

10th ques. Are you able to state the day and date of your first hearing these public rumors?

Ans. I am not.

11th ques. Please state who you first heard talk on this subject.

Ans. Can't tell that; do not know; don't recollect.

12th ques. Can you not tell any, or was the talk so general?

Ans. It was so general, can't name any one.

13th ques. Did you hear of the mortgages to Mrs. Barbour of $25,000 on Oct. 1st, 1873; to Beverstock on Sept. 26th, 1873, of $12,000; and again to Beverstock on Oct. 8th, 1873, of $8,000?

Ans. I have heard there were mortgages given; can't state the amounts, and do not know when I first heard them; think it was a long time after the occurrence, though.

14th ques. Did you not hear, about the time of the reported
233 failure of said bank and Hickox, that Mr. Colby had borrowed of O. S. Grimes $6,000, and there were complaints of the manner in which he procured it?

Ans. I heard about it, and that there were complaints, but think it was after Mr. Grimes got home from the East; think he told me himself.

15th q. Had you not heard some time prior to these failures, and was not the talk general, that Mr. Colby was charged with irregularities in the management of the *of the* funds of the Farmers' National Bank as cashier, and that in consequence thereof he retired from the cashiership?

Ans. I think the most I heard was dissatisfaction of one of the leading men in the bank, and that his opposition caused Colby's retirement; what the causes were I never heard until after the failure aforesaid.

16th ques. Did you not hear about the time of these failures that Mr. Colby, upon his paper and upon the paper of his son and son-in-law, Jacob Hade, had drawn out of the Farmers' National Bank $20,000 shortly before the failures?

Ans. I heard some talk about it some time afterwards; think it could not have been very soon after; I am not sure about the amount; think it was not less than $10,000, and from $10 to $20,000.

Re-examination:

1st ques. by A. K. Dunn, esq. Please name the person referred to in your answer to question No. 15, of your cross-examination.

Ans. Mr. Jas. Purdy, the president of the bank.

Recross-examination:

1st qu. by L. B. Matson. Did you hear Mr. Purdy say anything on that subject?

Ans. I have heard Mr. Purdy express dissatisfaction with Col-
234 by's management; nothing particular that I can recollect of.

2d ques. Was not your business such at the time and for some time subsequent to these failures as to require your close and continued

attention to the same, and is it not a fact that you spent but little time on the streets talking (or elsewhere) or listening to rumors?

Ans. No, sir; not particularly. My business did not require any more close and continued attention then than at other times, and my impression is I spent about as much time on the street as most persons, not indulging in much talk, but getting the news. I had no pecuniary int. in the banks or railroad, except some stock in railroad. Was not an officer of either. Had $250 of stock. Do not consider it worth anything.

GEO. W. BLYMYER.

Testimony of Wm. B. Mercer.

Also WM. B. MERCER, of Mansfield, Ohio, being sworn, testified as follows:

1st ques. by A. K. Dunn, esq. State where you reside; what business you are engaged in; how long you have been engaged in such business; where your business house is located, and where on October 1st, 1873; and whether you had a general acquaintance with the people of Mansfield, Ohio.

Ans. I reside in Mansfield; am engaged as a retail dealer in drugs, and have been for over a dozen years; my business house is located on west side of Main st., Mansfield, O.; was located Oct. 1st., 1873, and for years before and now is; and I have a general acquaintance with the people of Mansfield.

2d qu. Please state if you are acquainted with the defendant,
235 Hubbard Colby; and, if so, how long have you known him?

Ans. I am, and have known him for seventeen years.

3d ques. Please state if you remember the occurrence of the failure of the 1st National Bank of Mansfield, O., and whether you heard any reports in Mansfield about the time of said failure unfavorable to the financial condition of Hubbard Colby; if so, what were they; and when, with reference to said failure, did you first hear them?

Ans. I remember said occurrence. I cannot say definitely as to time when I heard reports as to Colby. Heard the reports and heard rumors, but cannot say definitely as to time. The reports were that Mr. Colby was involved with Hickox, and would lead probably to his failure. It was several days, probably a week. There was so much excitement I cannot fix definitely the date.

4th ques. What was the financial condition of Hubbard Colby in Mansfield before and up to the time of the reports which occurred after the failure of said bank as to being solvent or insolvent?

Ans. His reputation was that of a solvent man.

Cross-examination:

1st ques. by L. B. Matson, esq. To whom have you recently been talking to about the subject-matter of which you have testified?

Ans. The last party I talked with was Henry P. Davis.

2d ques. Did you have a talk with Mr. Colby at any time on this subject; if so, about when?

Ans. I have not.

3d ques. Do you recollect the day or date of the failure?

Ans. About latter part of Sept., 1873.

4th ques. You are not able to state how many days elapsed from failure of Bank and Hickox until you heard these reports?

236 Ans. I cannot say definitely.

5th ques. Was it not generally talked and known in this com-

munity for a long time prior to these failures that Mr. Colby and Mr. Hickox were very intimate in their social and business relations?

Ans. Yes.

6th ques. Was it not generally talked that they were on each other's paper, and also jointly liable on acc't of the building of railroad?

Ans. I cannot say that it was. I would say I never heard them associated together in that way; had no connection with r'road. I heard less than others on that subject.

7th ques. Was there not considerable excitement immediately after the failure of bank and Hickox and statements as to the financial condition of leading business men and men of reputed wealth?

Ans. There was.

8th ques. Supposing 1st National Bank, Hickox, and McMann to have failed on Friday, Sept. 26th, 1873; are you willing now to swear from your memory that you did not hear these reports concerning Mr. Colby as early as Monday or Tuesday of the week following?

Ans. I would say I cannot swear I did not hear that.

9th ques. Are you acquainted with the building on corner of West Diamond and Market st., known as Colby and Geddes Block; and, if so, what was the fair money value of that property on Oct. 1st, 1873?

Ans. I am; have occupied a room in it for years, and in my judg't would say $25,000.

Direct-examination:

237 1st ques., by A. K. Dunn, esq. Was that property worth more or less on Oct. 1st, 1873, than before?

Ans. Less.

2d ques. How much less?

Ans. Should say $5,000.

3d ques. How long prior to that time had it been worth $5,000 more?

Ans. Should say one year before.

4th ques. To what during third year do you appreciate the depreciation of the value of property?

Ans. General depreciation of property, occasioned by the panic.

5th ques. The panic had not occurred a year before that time?

Ans. It had not. I might have said less time than a year.

6th ques. How much less time than a year?

Ans. We date the panic from that time; that was when we felt it at our immediate home here; probably not any time before that.

7th ques. How could you determine, then, that it had depreciated $5,000.00?

Ans. Taking into consideration the stringency of the money market.

8th ques. Could you tell how much the stringency in the money market would depreciate property from Friday of one week to Wednesday of the next?

Ans. Only from general talk.

9th ques. Had there been any transactions in those few days so as to enable you say there had been any change in r. estate in Mansfield, O.?

Ans. There had been none.

WM. B. MERCER.

Testimony of Wm. H. Harris.

Also came WM. H. HARRIS, of Mansfield, Ohio, who, being duly sworn according to law, deposes as follows:

238 1st, by A. K. Dunn, esq. Pleas' state where you reside; what business you are engaged in; how long you have been in such

business; house was located on Oct. 1st, 1873, and whether you had a general acquaintance with the people of Mansfield, O.

Ans. I reside in Mansfield; business is that of a bookkeeper for Wood and Welter, wholesale dealers in dry goods, notions, &c. Have been such for several years past, and our house is located and was on Oct. 1st, 1873, on public square in Mansfield, Ohio, northeast corner; and have a fair acquaintance with people of Mansfield, O.

2d ques. Please state if you are acquainted with the defendant, Hubbard Colby; and, if so, how long have you known him?

Ans. I am acquainted, and have known him for almost six years.

3d ques. Please state if you remember of the occurrence of the failure of the 1st National Bank of Mansfield, Ohio, and whether you heard any reports in Mansfield, about the time of said failure, unfavorable to the financial condition of Hubbard Colby; and, if so, what were they, and when with reference to said failure did you first hear them?

Ans. I do remember said occurrence. I recollect of hearing soon after the failure of the National Bank of reports effecting Colby, but I do not recollect how soon thereafter, but think it was about a week or ten days thereafter. The first report I heard was that Colby had indorsed for Hickox enough to affect him some, but did not hear what amount; after hearing that, but how soon after I cannot say, I
239 * heard that his losses by Hickox would be the cause of his failure, and afterward heard other rumors.

4th ques. What was the financial reputation of Hubbard Colby in Mansfield before and up to the time of the reports which occurred after the failure of said bank as to being solvent or insolvent?

Ans. His reputation so far as I know or heard was that he was perfectly solvent.

Cross-examination:

1st ques., by L. B. Matson. Were you interested in the pecuniary wellfare of Mr. Colby, or an officer, a stockholder, in any of the banks in Mansfield, or the railroad thereof, or did you own any real estate in city of Mansfield?

Ans. No.

2d ques. You speak in your examination-in-chief of others; please state what the other rumors were.

Ans. After what I have stated, I heard from time to time that Colby would have to make an assignment, or that he would fail, and several times I heard he had failed before he did.

W. H. HARRIS.

Testimony of C. Shumvay, sr.

Also came C. SHUMVAY, sen'r, of Mansfield, Ohio, who, being sworn according to law, deposes as follows:

1st ques., by A. K. Dunn, esq. Please state your residence; what business you are engaged in; how long you have been in such business, where your business house is located, and whether you had a general acquaintance with the people in Mansfield, Ohio.

Ans. I reside in Mansfield, Ohio, and am book-keeper, and have been for a good many years; was with Blymyer and Bro. on the public square, n. w. corner of public square on Main st., and I had a general acquaintance with the people in Mansfield.

2d ques. Please state if you are acquainted with the defendant,
240 Hubbard Colby; and, if so, how long have you known him?

Ans. I am, and have known him for about ten years.

3d ques. State if you remember the occurrence of the failure of 1st Nat. Bank of Mansfield, and whether you heard any reports in Mansfield about the time of said failure unfavorable to the financial condition of Hubbard Colby; and, if so, what were they, and when with reference to said failure did you first hear of said reports?

Ans. I remember that occurrence. Did hear reports unfavorable to the condition financially of Hubbard Colby, but hardly can tell when I first heard them; as near as I can recollect, it was two or three weeks after the failure of the 1st. National Bank.

4th ques. What was the financial reputation of Hubbard Colby in Mansfield before and up to the time of the reports which occurred after the failure of said bank as to being solvent or insolvent?

Ans. His reputation was that of solvent. I always supposed he was worth a good deal of money.

Cross-examination:

1st ques., by L. B. Matson. Were you at home at time of failure of 1st National Bank and Hickox?

Ans. Yes, sir.

2d ques. What was day and date of the failure?

Ans. I do not recollect now.

3d ques. You are book-keeping for Blymyer and Bro., of which the witness Geo. Blymyer was a partner?

Ans. No, sir; not at that time. I commenced with Blymyer and Bro. January 1st, 1874; was settling up the affairs of Blymyer, Day &c., and my place of business was in the office of Blymyer and Bro.

241 4th ques. Were you personally interested in the pecuniary welfare of Mr. Colby, or an officer or stockholder in any of the banks of Mansfield or the railroads thereof; or did you own any real estate or commercial paper in the city of Mansfield at or about that time?

Ans. I was not interested in Colby; was not an officer or stockholder in any bank or railroad in Mansfield, and did not own real estate in said city, or commercial paper in Mansfield, Ohio.

5th ques. State if there is any date or memoranda by which you can fix the date of these reports first.

Ans. I have nothing except my recollection.

6th ques. Was there not great excitement and many reports affecting the business men of Mansfield immediately following the failures of the said bank, Hickox and McMann?

Ans. I did not hear very much said about it till sometime afterwards.

7th ques. Was there not a run on the other banks immediately after said failure, and did they not have to take precautionary means to prevent depositors from drawing out their deposits.

Ans. Yes.

8th ques. Supposing the failures of said bank, Hickox and McMann to have occurred on Friday, Sept. 26th, 1873, and this run on the banks of Mansfield to have occurred on Saturday, Monday, and Tuesday following, are you willing now to swear from your memory that you did not hear of these reports concerning Mr. Colby as early as Monday and Tuesday of the week following the failures?

Ans. I am.

9th ques. Give, if you please, any reason you have for fixing the

242 dates of these reports, and state with whom you have talked recently on the subject; give what was said.

Ans. I have no reason, only my recollection. I have had some conversation within the last week or ten days with Geo. Blymyer and Mr. Henry P. Davis. Pretty hard to say what was said. It was a general conversation about Colby's matters.

10th ques. Did not Mr. Davis enquire of you and state, in substance, that these reports did not occur for some time after these failures?

Ans. He might have asked me as to the time when these reports were. I think he did not ask and state as you have it in the question.

11th ques. You heard it generally reported that Colby was largely involved as indorser for Hickox and on acc't of the building of the Coldwater Railroad, did you not?

Ans. I did.

12th ques. Have you any memoranda or date by which you can fix when you heard these reports?

Ans. No.

13th ques. Did you not also hear it reported that Mr. Colby, by this use of his paper and the paper of his son, H. H. Colby, and son-in-law, Jacob Hade, had drawn from the bank (Farmers' Nat. B'k) some $20,000?

Ans. Do not think I ever did hear of it in that way. I have heard Colby and Hade had drawn some money out, but not that Henry H. had.

C. SHUNVAY, SR.

Sworn to before me and subscribed in my presence M'ch 11th, 1875.

HENRY C. HEDGES,
Register.

243 *Correction of William B. Mercer's testimony.*

On March 12th, 1875, William B. Mercer, whose testimony is above written, came in and asked privilege to correct one item of his testimony, being his answer to the 9th question of the cross-examination, and says now, in answer to the question, that the fair money value of the same is $30,000 instead of $25,000.

In explanation of my desire to correct my testimony, I wish to say that since testifying before I have ascertained more particularly the rents of the building at that time, and now state its value to be $30,000.00.

1st ques., by L. B. Matson. Please state with whom you have conversed about the rents since testifying before.

Ans. Mr. Moses Black, one of the rentors of the building.

2d ques. Any one else?

Ans. None other.

3d ques. Did you learn from him what the net income was of the building during the last several years, per year?

Ans. No official figures. We knew what we paid, M. and J. H. Black and myself, and from recollection of what parties paid for rooms above.

4th ques. What did you figure out the net income of the building to be?

Ans. $3,325.00 net income.

5th ques. Do you mean from this you deducted the costs of insurance, repairs, and taxes?

Ans. No.

6th ques. Did you figure up and estimate the annual cost of insurance, taxes, and repairs would be?

Ans. Did not.

WM. B. MERCER.

Sworn to before me and subscribed in my presence March 12th, 1875.

HENRY C. HEDGES,
Register.

Testimony of Jno. Wood.

244 Also came JOHN WOOD, who, being duly sworn according to law, deposes as follows:

1st ques., by A. K. Dunn, esq. State where you reside; what business you are engaged in; how long have you been in that business; where your business house is located; and whether you had a general acquaintance with the people of Mansfield.

Ans. I reside in Mansfield, Ohio; am a merchant. Have been in Mansfield for about 30 years, and have been in business about that time. Have a general acquaintance in Mansfield, and my business house is located now on corner of public square, south side.

2d question. State if you are acquainted with the defendant, Hubbard Colby, and how long you have known him.

Ans. I am; and have known him for 30 years, or thereabouts.

3d ques. State if you remember of the occurrence of the failure of the 1st National Bank of Mansfield; and whether you heard any reports in Mansfield, about the time of the failure of said bank, unfavorable to the financial condition of Hubbard Colby; and if so, what were they, and when did you first hear them in reference to said failure?

Ans. I remember said occurrence. Did hear reports about Mansfield unfavorable to the financial condition of Hubbard Colby, after the failure of said bank. I should say from 10 days to 2 weeks after the failure of the bank.

4th ques. What was the financial reputation of Hubbard Colby in Mansfield up to the time of the reports which occurred after said failure of the bank, as to being solvent or insolvent?

Ans. He was considered solvent.

245 Cross examination:

1st ques., by L. B. Matson. There was a good deal of excitement among business men immediately following these failures, and a good many reports as to the solvency of different business men, was there not?

Ans. There was.

2d ques. Supposing the failure of 1st National Bank to have occurred on Friday, Sept. 26th, 1873, and of Hickox and McMann, are you willing to swear now from memory that you did not hear these reports concerning Mr. Colby as early as Monday and Tuesday of the week following the failures?

Ans. I think I did not as early as that.

3d ques. Have you any date or memorandum by which you can fix the time when you first heard these reports?

Ans. I have not; only my general recollection of the failure of the said bank.

4th ques. Was it not generally known in this community that Hickox and Colby were very intimate in their social and business relations?

Ans. It was.

5th ques. Did you not hear, and was it not generally reported and talked of, that Colby and Hickox were largely liable for each other as indorsers for each other, and jointly liable to a large amount on account of the building of the Coldwater Railroad; if so, if you have any

memorandum or date by which you can fix the time when you heard first these reports?

Ans. I have no memoranda or date by which I can fix any dates. It was so talked of after some few days, as near as I can recollect.

JOHN WOOD.

Sworn to before me and subscribed in my presence, March 11th, 1870.

HENRY C. HEDGES, *Register.*

246 *Testimony of Hiram Harroun.*

Also HIRAM HARROUN, of Mansfield, Ohio, who, being duly sworn, deposes and says:

1st ques., by A. K. Dunn. State your age, residence, business, location of your business house, and if you are generally acquainted with the people of Mansfield.

Ans. I am 34 years of age; Mansfield; am a merchant, jobbing crockery and glassware, and house is located on north side of public square, and am generally acquainted in Mansfield.

2d ques. State if you are acquainted with Hubbard Colby and how long have you known him?

Ans. I do; have known him about 4 years.

3d ques. Do you remember the occurrence of the failure of 1st National Bank of Mansfield? and state if you heard any reports in Mansfield about that time unfavorable to the financial condition of said Colby, and when you first heard them in reference to said failure.

Ans. I remember the occurrence; I heard no reports at that time unfavorable to Mr. Colby's financial condition; I did a week or more after the failure of the bank hear reports.

4th. What was the financial reputation of Hubbard Colby up to the time of these reports, which occurred after the failure of the said bank, as to being solvent or insolvent?

Ans. I supposed him to be solvent.

Cross examination:

1st ques., by L. B. MATSON. There was a good deal of excite-
247 ment among business men immediately following these failures, and a good many reports as to the solvency of different business men, was there not?

Ans. Yes, sir.

2d ques. The failures of bank, Hickox, and McMann occurred Sep. 26th, 1873. Are you willing to swear now from your memory that you did not hear these reports concerning Mr. Colby as early as Monday or Tuesday of the week following?

Ans. Yes, sir; I am.

3d ques. Have you any date or memoranda by which you can fix the time when you first heard the reports?

Ans. No, sir.

4th ques. Was it not generally known in this community that Hickox and Colby were very intimate in their social and business relations?

Ans. I did not know that such was the case.

5th ques. Did you not hear, and was it not generally reported and talked of, that Colby and Hickox were largely liable for each other as indorsers for each other, and jointly liable on acc't of building of the Mansfield Coldwater Railroad, and have you any date by which you can fix the date when you first heard such reports?

Ans. I did hear, some time after the failure, that they were connected

in business affairs; but I cannot fix the time when I first heard it, and have no date.

HIRAM HARROUN.

Sworn to before me and subscribed in my presence. March 11th, 1875.
HENRY C. HEDGES, *Register.*

Testimony of Jos. H. Black.

Also came JOS. H. BLACK, who, being sworn, says:

1st ques., by A. K. DUNN. State your residence, occupation; where was your business room located on Sep., 1873, and do you know
248 Hubbard Colby. Do you recollect the occurrence of the failure of the First National Bank? Did you hear any reports unfavorable to the financial condition of said Hubbard Colby about that time; if so, when did you first hear them? What his financial reputation in Mansfield before said reports as to being solvent or insolvent?

Ans. My residence is Mansfield; am a dry goods merchant, and have resided in Mansfield sixteen years; my business room was located on west side of public square, corner of Market st. and Main, in 1873; I knew Hubbard Colby, and have known him during these sixteen years. I do remember the said occurrence of the failure of said 1st National Bank. I heard some reports unfavorable to Colby's financial condition, but not immediately after said failure, nor for ten days or two weeks after said failure. The financial reputation of Colby before said reports was that he was solvent.

2d ques. Do you know how much the Colby and Geddes building rents for; if so, please state the amount?

Ans. It rents for $3,750.00, or about that.

Cross-examination:

1st ques. There was a good deal of excitement among business men immediately following these failures, and a good many reports as to the solvency of different business men, was there not?

Ans. Yes.

2d ques. Are you willing to swear from memory that you did not hear these reports concerning Mr. Colby as early as Monday or Tuesday of the week following the failure of the bank, which was on Friday?
249 Ans. I do not recollect of hearing anything against Colby for at least 8 or 10 days.

3d ques. Have you any memoranda or date by which you fix the dates of the reports?

Ans. No.

4th ques. Was it not generally known in this community that Hickox and Colby were very intimate in their social and business relations?

Ans. Yes.

5th ques. Did you not hear, and was it not generally reported and talked of, that Colby and Hickox were largely liable for each other, as indorsers for each other, and jointly liable on account of building of the Coldwater Railroad; and when did you hear?

Ans. Yes, I did hear; it was generally known that they indorsed for each other.

6th ques. Is it not a fact that a large portion of the time a considerable part of the building is vacant?

Ans. Since the building was put with the exception of the little room at head of the stairs and the daguerrian room, say for 3 years, and the office of Geddes, Dickey and Jenner about 1½ years have

been vacant, otherwise the building has been rented; the stores below rent as follows:

Our room	$1,725
Mercer's	$1,000
South rooms, on 2d floor	$250
Masonic hall	$300

It may be non endnon, and the other rooms I cannot tell exactly; think Geddes, Dickey and Jenner; don't know how much exactly; should say rooms which have been vacant now and then would upon rent some $700.

7th ques. Do you think the present rents, at present figures, are low or high?

Ans. I think they are too high.

JOSEPH H. BLACK.

250 Sworn to before me.

HENRY C. HEDGES,
Register.

Testimony of Henry P. Davis.

HENRY P. DAVIS, a witness called for the plaintiff, being by me first duly sworn to testify the truth, the whole truth, an' nothing but the truth in said cause, deposes as follows:

1st ques., by L. B. MATSON. State your name, age, residence, and occupation.

Ans. Henry P. Davis; am fifty-two years of age; reside in Mansfield, Ohio; and am an att'y by profession, though for some eight years was not engaged in my profession, but am postmaster of Mansfield, Ohio.

2d ques. Are you acquainted with the property known as *as* the homestead property of Hubbard Colby, in the city of Mansfield, Ohio; and, if so, what, in your judg't, was the money value thereof on Oct. 1st, 1873?

Ans. I am acquainted with the property, but do not think I could state the money value of it on that day, owing to the disturbed condition of our financial affairs on that day and for some days prior thereto. It would be difficult to fix any settled money value on real estate in Mansfield, according to my judgment. I have never dealt in real estate and have but little means of knowing the true value of real estate, but think that property at that time, taking into consideration the financial disturbances in our town, ought to have been worth from $18,000 to $20,000.

Cross-examination:

1st ques., by A. K. DUNN, esq. Was there any difference in the value of this property on the 1st day of October, A. D. 1873, and the
251 25th day of September, A. D. 1873?

Ans. I think there was.

2d ques. Was it worth more or less on the 25th day of September, 1873?

Ans. I think it might have been sold for more.

3d ques. What caused the depreciation?

Ans. The failure of the 1st National Bank of Mansfield, and consequent disturbance of financial matters.

4th ques. Had this failure affected the country generally or only the property about Mansfield?

Ans. I think at that time the effect was felt more in Mansfield than in the country.

5th ques. Had the effect of this failure been anything else than to create a state of uncertainty and suspend the transfer and sale of real estate up to that date rather than to affect its value in money?

Ans. I think it had unsettled the value of real estate and at that time suspended the sale and demand for real estate, and for the time being affected the value.

6th ques. Do you form your estimate now from what your opinion was on that day or from modifications growing out of subsequent events growing out of the failure?

Ans. On both; more, perhaps, the subsequent events growing out of the failure.

7th ques. Are you acquainted with Hubbard Colby, the defendant; and, if so, how long have you known him?

(Objected to as not being cross-examination.)

Ans. I am; have known him 30 years.

8th ques. Refer'ing to the occurrence of the failure of the 1st National Bank of Mansfield, Ohio, state whether you heard any reports in Mansfield, about the time of said failure, unfavorable to the financial
252 condition of said Hubbard Colby; and, if so, what were they, and when, with reference to said failure, did you first hear them?

Ans. I heard reports in Mansfield concerning his financial condition after the failure of the 1st National Bank. The reports I heard were that he was bail for Mr. Hickox for a large amount, and the first I heard of this matter as a rumor or report was about one week after the failure of the 1st National Bank.

9th ques. What was the financial reports taken of Hubbard Colby in Mansfield, upon and up to the time of the reports which occurred after the failure of the said bank, as being solvent or insolvent?

Ans. His reputation up to that time was that he was solvent.

10th ques. Did you have a conversation with Tho. E. Douglass within a week after the failure of the 1st National Bank of Mansfield, O., in which you spoke of the possible or probable failure of Mr. Colby, saying you was on his bond as executor or administrator?

Ans. I did not, within that time.

(The 10th, 9th, 8th, and 7th questions above and answers thereto are objected to by counsel for the complainant as not being cross-examination.)

Redirect examination:

1st ques., by L. B. Matson. You are one of Mr. Colby's bondsmen as adm'r of the Barbour estate?

Ans. Yes, sir.

2d ques. Was it not generally known for some time before, and up to the time of these failures, that Mr. Colby and Mr. Hickox were very intimate in their social and business and even church relations?
253 Ans. I think it was generally known they were socially intimate. They were members of the same church, but as to their business intimacy, I cannot say.

3d ques. Have you any date or memoranda as by which you could definitely state when you first heard the reports concerning Mr. Colby?

Ans. I have no memorandum of the date, but there are circumstances that enable me to fix in my recollection the time when I first heard the reports.

4th ques. Have you any circumstances or memoranda which will enable you to show when these reports were first talked of in Mansfield?

Ans. No, sir; I can only state when I first heard them.

H. P. DAVIS.

Sworn to before me and subscribed in my presence this 12th day of March, 1875.

HENRY C. HEDGES,
Register.

Testimony of James Dickson.

Also came JAMES DICKSON, of Mansfield, Ohio, who, being duly sworn according to law, deposes as follows:

1st ques., by L. B. Matson, esq. State your age; how long you have resided in Mansfield.

Ans. I am 45 years of age and have resided here 30 years *here* with occasional absence from here.

2d ques. State if you are the owner of real estate in Mansfield, including business rooms and residences, and how long have you been the owner of same.

Ans. I am; have owned business property twenty-four or twenty-five years, and residences about as long.

2d ques. State if you are the owner of farming lands adjoining the city of Mansfield, and how long have you owned the same.

Ans. I am, and have been for a number of years.

254 4th ques. How long have you been acquainted with the farm known as the Peter Bell farm and now as Colby's farm?

Ans. I have been for 23 years.

5th ques. State what the character and condition of the improvements on that farm in the fall of 1873 were.

Ans. I would not consider them as ordinary good.

6th ques. What, in your judg't, was the fair market value of that property from 26th day of September to the 1st day of October, 1873?

Ans. In my opinion, and it is all I can give, and I take it from my knowledge of the premises, not on any particular day, nor do I give it exactly, I will say from $90 to $110 per acre.

7th ques. What, in your judgment, was the fair money market value of the building and premises known as the Colby and Geddes Block in Mansfield on Oct. 1st, 1873?

Ans. I don't mean to fix any value on any particular day, but according to my judg't $25,000 to 30,000.00.

Cross-examination:

1st ques., by A. K. Dunn, esq. You have been examined in this case as a witness before?

Ans. Yes, sir.

2d ques. How near to the city of Mansfield is this Bell farm located?

Ans. It is within the limits of the city.

3d ques. Do you know of any lands within the limits of the city of Mansfield having been sold within five years last past for less than $200 per acre?

255 Ans. I bought 5 acres at $90.00 per acre and not at sh'ff's sale, nor did I hold a mortgage on it. It is on the Painter farm, as near the square as the Bell farm, northwest corner of the quarter, on the west line of the corporation, and there is a road to it and a good spring on it.

4th ques. Did you ever offer to buy the Bell farm?

Ans. I was offered it.

5th ques. What did you offer per acre for it?

Ans. I declined to make any offer for it.

6th ques. Have you a mortgage on the Bell farm?

Ans. I did have and have yet.

7th ques. Has some portion of this farm been laid off in lots?

Ans. A portion now in out lots.

8th ques. At what time do you estimate the value of this farm, now or some previous time?

Ans. Just whenever my attention is drawn to—answer according to my opinion.

9th ques. Do you give the value of it to-day?

Ans. As near as I can get at it I do.

10th ques. Is there any difference in the value of it to-day and 1st day of Oct. 1873?

Ans. I cannot see any particular difference.

11th ques. Was there any difference in the value of it on Oct. 1st, 1873, and 26th day of Sept., 1873?

Ans. I did not notice the difference.

12th ques. Was there any difference in the value of it on January 1st, 1872, and present time?

Ans. Did not notice it particularly.

13th ques. Is there any difference in the value of the Colby and Geddes block from what you give it now and on Oct. 1st, 1873?

Ans. I don't think there was any difference.

14th ques. Was there any difference in value on Oct. 1st, 1873,
256 and on Sept. 25th, 1873?

Ans. I did not notice that I can recollect of.

JAMES DICKSON.

Sworn to before and subscribed in my presence March 12th, 1875.

HENRY C. HEDGES,
Register.

Testimony of Nelson Abbott.

Also came NELSON ABBOTT, who, being duly sworn according to law, deposes as follows:

1st ques., by L. B. Matson. State your residence and occupation, and how long you have been at that occupation.

Ans. Mansfield, O. Am sup't of Mansfield Machine Works since Jan'y 1st, 1874, and have been connected with the Mansfield Machine Works for seven years last past.

2d ques. State who was the financial ag't and manager on Oct. 1st, 1873, and how long had he been such financial ag't and manager, and who the president of the board was?

Ans. Hubbard Colby was, and he had been for some two years. Mr. Reese was sup't and manager.

3d ques. Who was the person who negotiated loans and made purchases and sales?

Ans. Mr. Colby made the loans; sales were made at the office by Reese and myself, and materials were purchased by myself and Mr. Reese.

4th ques. State what the financial condition of the Mansfield Machine Works was on Oct. 1st, 1873.

Ans. This was about the time they were considering the question of

making an assignment. The assignment was made in November—
257 Nov. 4th, 1873—but the matter was talked up during the month of October, 1873. It was talked of from right after the failure of the 1st National Bank, from about that time; I considered its financial condition pretty good. The statement made to the creditors showed 351,000 of assets and 171,000 of liabilities, but not including the stock.

5th ques. What was the amount of the stock?

Ans. $300,000.

6th ques. What portion of this 170,000-odd thousand was due on Oct., 1873?

Ans. I cannot tell without reference to the books.

7th ques. Had you any money or means to pay the debts maturing about 1st of October, 1873?

Ans. We had no money, but paper maturing due as collections.

8th ques. Were you able to meet liabilities as they matured?

Ans. There was a note of $5,000 to the Sou. Mich. Nat. Bk. we were not able to meet.

9th ques. Was it considered by the board and manager of the works on last of Sept. and 1st of October, 1873, possible to raise the money to meet the liabilities of the company as they matured?

Ans. It may have been later in the month of October that they decided they would not be able to meet the liabilities.

10th ques. In that estimate of assets there was included patterns, patent right claims—rights to manufacture patented machinery in certain districts—aggregating a large amount?

Ans. No, sir; there was no patent rights or rights to manufacture. It was real estate, tools, machinery, worked finished and unfinished, bills receivable, patterns. The patterns were app'd very low.

258 11th ques. What was the market value of the stock of the Mansfield Machine Works on Oct. 1st., 1873, or any time after the failure of McMann, Hickox, or 1st Nat. Bank of Mansfield.

Ans. There was no sale for it, and I do not think there was any market value for it after that.

12th ques. Do you know of any sales of this stock after 26th day of Sept., 1873, the date of said failure; and, if so, at what figures; or do you know of any being offered for sale; and, if so, at what figures?

Ans. I believe Reese sold some stock to Mr. Grimes for western lands. Do not know the figures. Mr. Reese offered his stock, but know of none others being offered except this. Do not know at what he offered it.

13th ques. Was not Mr. Reese, the supt. of the Mansfield Machine Works, the owner of stock, and was he not offering to sell it, and up to the time he sold to Mr. Grimes for western lands?

(This is objected to as leading by counsel for def'ts.)

Ans. He was, and I believe he was trying to sell it.

14th ques. In this estimate, made for the purpose of exhibition to the creditors, did it not include the property known as the Blymyer, Day Co. Works, being real estate and buildings and machinery, at $103,000?

Ans. Yes; it was estimated at $103,000.

15th ques. This property was procured or purchased from Blymyer. Day and Co. by Mansfield Machine Works, by issuing and delivering of stock only to the amount of $100,000?

Ans. Yes, for works and machinery, but included no materials. We paid the cash for some $13,000 of material and machinery, and
259 then we added 30,000 of machinery afterward.

16th ques. These shops known as the Blymyer, Day and Co.

shops were not in use on Oct. 1st, 1873, were they; if they were in use, to what extent, and for what purpose?

Ans. They were in use. We were building 30 gondola cars for the Chicago and Atlantic Railroad. They countermanded the order, and we stop'ed working in October.

Cross-examination:

1st ques., by A. K. Dunn, esq. What time in October, 1873, was the statement of the affairs of the company made to the creditors?

Ans. It must have been after the middle of the month, but it was not to the creditors; it was to stockholders. It was Oct. 20th, 1873, and was made to directors and other stockholders by E. H. Reese, supt., showing them the condition of the company at the time.

2d ques. Was the public in any way advised about this matter prior to that time?

Ans. No, sir.

3d ques. Had the machine works continued in operation from Oct. 1st, '73, up to that time as they had prior to that?

Ans. Yes, sir.

4th ques. When was the 1st meeting of the directors of this company that took into consideration the financial condition of the company?

Ans. Oct. 20th, 1873.

5th ques. Had the stockholders outside of those composing the board of directors been informed in any way of the condition until this report was made on Oct. 20th, 1873?

Ans. No, sir.

260 6th ques. Was any question in the community as to the value of this stock, or depreciation of it, prior to this meeting?

Ans. No, sir.

7th ques. When was the last dividend made by this corporation to its stockholders, and how much was it?

Ans. Dec., 1872, and 10 % on the capital stock of $300,000.

No. 8 ques. Is the machine works in operation now, and has the corporation got back their property which was assigned to the assignee, made an arrangement with their creditors, and are carrying on their business as heretofore?

Ans. Yes, sir.

9th ques. Was there any disposition or sale of any of the property under the assignment, or was it transferred back just as the assignee received it?

Ans. With the exception of the engines and a saw-mill, it was. These had been contracted before the assignment, and were delivered in pursuance of contract by assignee.

Redirect:

1st ques., by L. B. Matson. Was not the condition of the company financially talked over long before the 20th day of October, 1873?

Ans. Well, I presume it was talked over by Mr. Reese. It was not by members of the board, for Hickox and Colby were members of the board and were away. E. H. Reese, A. L. Grimes, H. Colby, W. S. Hickox, J. H. Cook, Edward Sturges, sen'r, and myself were the board.

2d ques. Had not Mr. Colby access to the books, and did he not in fact have knowledge of the condition of the works on Oct. 1st,

261 1873, and was he not an active financial manager up to that time, and especially in procuring loans?

Ans. Yes, sir; he had access to the books, and was in and around the works up to that time.

3d ques. Did Mr. Colby or Mr. Hickox give any attention to the works, or ever visit the same after the failure of Hickox?

Ans. Mr. Hickox never gave any attention to the works; Mr. Colby gave his attention up to Oct., but not afterwards, nor visit the same after Hickox's failure.

4th ques. What proportion of the indebtedness which existed, as you have stated, was for borrowed money from banks and what for material?

Ans. Should say about ⅔ (two-thirds). We had bought material and obtained bank accommodations, and paid for same.

5th ques. You state the property was received back from the assignee and the works continued as before; was this not under an arrangement by which an extension of time was given by the creditors? State what that extension was, and under it what that arrangement was; and when did payments under it become due?

Ans. It was under an arrangement, the general terms of which was an extension of our indebtedness, classifying into 3 classes—

1. Debts of $100 and under $1,500, about.
2. " " 100 to 500, about 2,500.
3. " " 500 and unproved, amounting to $181,000.

And the first class was to be paid Sept. 1st, 1874, or before, and 2d class ½ on Sept. 1st, '74, and ½ June 1st, '75; 3d class ¼ or 25 % Sept. 1, '74, 25 % June 1st, '75; 25 % M'ch 1st, 1876; 25 % Sept. 1st, 1876, and int. 8 % per annum, and with a provision that the creditor should name 4 of the directors.

262 6th ques. Did the works meet the first payment out of the earnings and money collected of their own assets at maturity?

Ans. With one or two exceptions.

7th ques. This exception amounted to between ⅛ and ¼ of the whole payment, did it not?

Ans. About that, but we paid some 2,600 or more dollars of unsettled claims, which did not accept the terms of settlement and extension, and costs of the assignment.

8th ques. Did you not borrow $15,000 to make that 1st payment?

Ans. We had notes of our customers discounted for that purpose, and of course indorsed the paper.

N. ABBOTT.

Sworn to before me and subscribed in my presence, March 11th, 1875.

HENRY C. HEDGES,
Register.

Testimony of Jno. B. Daily.

Also came JNO. B. DAILY, who, being duly sworn on his oath, deposes and says:

1st ques., by L. B. Matson, esq. What is your age, occupation, and how long have you resided in the city of Mansfield?

Ans. My age is 47 and have resided in Mansfield twenty-five years, and am a real estate and insurance agent, and have been in that business ten years in Mansfield, and have a general acquaintance with the people and property of Mansfield.

2d ques. Are you acq'd with the Colby and Geddes block on Main st., in Mansfield, Ohio, and state the fair market value thereof on Oct. 1st, 1873?

263 Ans. I am and should say from 30 to 35,000, not to exceed $35,000.

3d ques. Suppose 1st Nat. B'k, Hickox and McMann to have failed on Sept. 26th, 1873, and in view of that fact, what would its value be on Oct. 1st, 1873?

Ans. $30,' to 35,000. My answer is in view of that.

4th ques. Are you accq'd with Bell farm? and if so, state its value on Oct. 1st, 1873.

Ans. I am not very familiar with the farm; know its location, but not state of improvement or buildings; from all I do know of it, should put it at $150 per acre.

Cross-examination:

1st ques., by A. K. Dunn. How did the value of this property, given by you, now, in view of the circumstances, compare with its value prior to the failure of the 1st National Bank?

Ans. In my opinion the property was a little more valuable before, say 20 % higher.

Re-direct:

1st ques. On Oct. 1st, 1873, was there any demand in the city of Mansfield for improved lots in the city in direction of Bell farm or any of the additions to said city?

Ans. Not much. For the year next before there had been some demand, but beyond Sycamore st., not much for a year.

JNO. B. DAILY.

Sworn to before me and subscribed in my presence, March 11th, 1875.

Testimony of Peter Ludwig.

Also came PETER LUDWIG, of Mansfield, in the county of Richland, Ohio, who, being duly sworn according to law, deposes as follows:

1st ques., by L. B. Matson, esq. Please state your age, residence, and occupation.

Ans. My age is 65 years; I reside near Mansfield and am a farmer.

264 2d ques. When did you move out of Mansfield, and prior to moveing, how long did you live in Mansfield?

Ans. I moved out on the farm in 1862, and had lived in Mansfield prior to that since 1836.

3d ques. State where your farm is on which you reside, in reference to the Colby or Bell farm.

Ans. My farm adjoins it on the west.

4th ques. State what in your judgment was the fair market value of the Bell farm on Oct. 1st, 1873.

Ans. Well, I suppose it would not sell for more than $100 per acre.

Cross-examination:

1st ques., by A. K. DUNN. What is your land worth on the west?

Ans. I don't know as mine is worth any more than that, only I have better improvements, better buildings, fences, and my land is in better farming condition.

2d ques. What is yours worth per acre?

Ans. I don't think it would sell for more than that; my land, taking the improvements, might sell for $125 per acre. I built a house in 1872 that cost about $4,000.

3d ques. Your land is more broken and not so much plow-land as on the Bell farm?

Ans. It is no more broken than the Bell farm. Have good fences and valuable fences, and valuable springs.

4th ques. Do you put your estimate on these two pieces of land as farming land; do you?

Ans. Yes, sir.

5th ques. The Bell farm lies between your farm and town, in the corporation, and yours out?

Ans. Yes, sir.

265 6th ques. The Bell farm would be more valuable for dividing up and selling in lots than it would be as farming land, would it not?

Ans. Yes, sir; there is a strip between the two railroads some 16 or 17 acres in it which for farming purposes is not of much consequence on acc't of no fences, and is not in such shape as to be valuable for laying out lots.

PETER LUDWIG.

Sworn to before and subscribed in my presence, March 11th, 1875.
HENRY C. HEDGES, *Register*.

Testimony of E. W. Smith.

Also came E. W. SMITH, who, being duly sworn according to law, deposes as follows:

1st ques., by L. B. MATSON. State your age, residence, and occupation.

Ans. I reside in Mansfield, Ohio; am 52 years of age, and my business is that of a real estate and insurance ag't, and has been for five years last past, in Mansfield, Ohio, and always lived in Richland Co.'

2d ques. What, in your judg't, was the fair market value of the Colby and Geddes block on Oct. 1st, 1873?

Ans. Should say from $27,000 to 30,000.

3d ques. Do you know the farm known as the Bell farm, west of Mansfield? If so, state its value at said date.

Ans. I am somewhat familiar with it. Have never been over it. Should say it was worth about $150 per acre.

Cross-examination:

1st ques., by A. K. Dunn. Was there any difference in this property on Oct. 1st, 1873, and 1st day of Sept., 1873?

Ans. No, sir.

2d ques. Is there any difference now and Oct. 1st, 1873?

Ans. Think not.

3d ques. Had failures in Mansfield of bank and those immediately
266 succeeding any influence, in your judg't, on the value of that property?

Ans. I can only judge of that by other things. Farms near our town sell about as well as two years ago. Property in town is about as firm, unless parties are compelled to sell. I was examined in this case once before.

E. W. SMITH.

Sworn to before me and subscribed in my presence, March 11th, 1875.
HENRY C. HEDGES, *Register*.

Testimony of James Purdy.

Also came JAMES PURDY, who, being first sworn as hereinafter certified, deposes as follows:

1st ques., by L. B. Matson. What was the market value, in your judg-

ment, on Oct. 1st, 1873, of the stock of the Farmers' National Bank of Mansfield, Ohio?

Ans. What I know of it now, it was not over 50 c'ts on the dollar; think it was not worth that.

2d ques. What would it have been worth in market if the condition of the bank had been as generally known as Mr. Colby had the means of learning its condition, and with those who were as familiar with its affairs as Mr. Colby was?

Ans. I would not have bought it at all if I had known it. Do not think the market value would have been over 50 c'ts on the dollar.

3d ques. What knowledge have you of the Mansfield Gas Light Company, and what connection had you therewith?

Ans. I have been a stockholder of it from its organization. Mr. Colby generally had the charge of it altogether. He had a majority of its stock. When Mr. Colby went out he owed it, as treasurer,
267 some $2,200. He put in a note of $1,600, which the man refuses to pay, leaving a balance against him of some $600. The Co. then owed the Farmers' Bank $5,000. Bills outstanding, $; don't know how much, but we have not got them paid as yet, and the bank holds over 3,000 yet; and we made a contract a few days ago to have the works all rebuilt at $12,000, and we furnish the brick, besides.

4th ques. State the fair market value of that stock on Oct. 1st, 1873, among those who had a knowledge of its financial condition.

Ans. I would not have given over 40 per c't for it. It was not worth 40 % with them who knew it.

5th ques. Have you any interest in or knowledge of the Mansfield Paper Mill or its stock?

Ans. I know nothing about it.

6th ques. What, in your judgment, was the fair market value of the Colby and Geddes Block in Mansfield on Oct. 1st, 1873?

Ans. I hardly know. Don't know what it cost. It ought to pay 10 % on its cost in rent. Property as large as that is not a marketable valuable property. There are but few persons who can buy such property. Doubt if the market value of that will exceed $25,000; may go to 30,000. I don't know what it rents for. I know the Peter Bell farm for 50 years or more, and as to its fair market value, as a farm, it is not worth over $75 per acre; some of it may do to lay out into out-lots, and for this purpose it may be worth more. Am so little acquainted with the sale of out-lots I can not say more.

7th ques. State if you are acquainted with the property in which Mr. Colby had an interest, known as the Chicago property; if you had a knowledge of its market value on Oct. 1st, 1873; if so what that market value was.

Ans. I am acquainted with that property. I am one-third
268 owner. Colby is one-third owner, and Granger's estate one-third. Never knew anything about its market value. We claimed it would some day be worth $45,000. It cost us a little more than 27,000; nearly 30,000. It has paid us about 10 % on its cost. In the fall of 1873 its value was very low. The income does not keep it in repair. The next year after the fire it rented well, but the tenants who went into it did not come out well. The market value in 1872 was considerably more. I suppose we might have got $45,000 for it. In 1873 we could hardly have sold it for more than its cost. The houses are seven in No., eight rooms in each. The tenants that went in after the fire, the next spring, were unable to pay the rents; rerented it; went out, and put a class of sub-lessees, who were disreputable, and in that nabor-

hood the same class of renters, and we have got no rents for a year or two of any acc't.

5th ques. You may now explain your reasons for fixing its value as you did of the stock of the Farmers' Nat. Bank of Mansfield, Ohio.

Ans. I will tell you its condition when I got control of it. The bank had been examined by Mr. Smith, Mr. Beverstock, and Mr. Colby, on 9th day of Sept., 1873, and they reported that they found everything to correspond with the books. When Mr. Hade went out the panic had just struck in. I went into the bank and resumed my duties as president, from which I had been debarred for about 3 years, and asked no questions. I give the items from a report I made to the directors at the time, and I think they are correct.

269 I found $129,532 of bill' receivable, all of which was subject to the defence of usury, and of which about $45,000 was good but slow, provided they did not plead usury, and which they were doing about that time; and what appeared due by Colby and the family, including Armentrout, was $27,939, and there were overdrafts, about $3,000. I found out afterwards paper of his son and Mr. Colby, indorsed by J. Hade as cashier, had been discounted at Cincinnati, and no entry of which went on the books, making the liabilities of Colby and his family about $50,000. Armentrout we have settled with. There was also a bill of Mansfield Machine Works of $12,500. Colby was president of that corporation, and about that time the corporation made an assignment. There was also an indebtedness of a coal and mining co. of $4,700, and other assets which had become doubtful by reason of bursting up of so many men in this town. There was due depositors $66,792.00. Bal. due country banks $8,442, and on Oct. 3d we got notice of a protest of a bill of $10,000 of Colby and Son, indorsed by Hade as cashier, making $85,234 that we were immediately liable for. We were bound to keep 15% on hand of deposits and circulation which amounted to about $23,000. There was $13,000 of currency on hand, and $10,000 of U. S. bonds on the balance-sheet, but not entered on the books. These we sold. The bonds belonged to the bank, but suppose they were the same you have heard so much of. There was a rush, and I sat down and fought it through, paid everybody who insisted on their money, and sacrificed some property of my own and raised $10,000, and got the directors to become liable for $10,000 more with me, and called on the stockholders to make a deposit of 10% each, on 15th of December, to help me along, to which only a part responded. In one report, on 1st of April, made a very thorough investigation, and came to the con-

270 clusion, with all we had made and served, our stock was worth about 50c. on the dollar, and so reported to the auditor of the county. Then the comptroller sent an order, after we made the report to him, directing me to make the capital good out of the stockholders, and I made a call of 30%, putting in all the authorities, 10% June 1st, 10% July 1, and 10% July 15th, and all paid in, and we are going on. The capital stock is $100,000, and we have good bills of 80.000, and some other doubtful and bad debts. As I was going home last night I thought I had not put the value of the Colby and Geddes block high enough. Came down with the intention of changing it. Since I have been sitting here it has occured to me that in 1870, and it was about the same value as it was in 1873, it was assessed by the assessor for taxation for $24,000. The 1st act of the board of equalization was to strike off $4,000, leaving it at $20,000, which I presume was done at request of owners, and therefore leave my testimony as I first made it.

Cross-examination:

1st ques., by A. K. Dunn, e'q. Have you been *acquainted* in this case before this time?

Ans. Yes; on another branch of the case.

2d ques. What did you regard the stock of the Farmers' National Bank worth before Oct. 1st, 1873?

Ans. Thought it was good—the face of it; knew nothing about the interior of it.

3d ques. What was the market value of the stock on Oct. 1st, 1873, and prior thereto?

Ans. Do not know as I had any market value. There was no buying or selling.

271 4th ques. What was it' standing in the market?

Ans. So far as I know, it was good. Had no doubt of it myself.

5th ques. When did you learn facts which depreciated it in your estimation, and how long after Oct. 1st, 1873?

Ans. When I examined the books in the month of October, 1873; can not tell when; some time in October. I did not, for a good while, deem it so far gone as I eventually found it.

6th ques. Was it as late *of* Oct. 15th?

Ans. Do not think I can tell. Do not know certain. Might by examining some letters.

7th ques. What is the bank stock worth now?

Ans. For all the purposes now of reporting or making dividends, should not call it more than 85 %; in that I include no doubtful paper, or the value of the franchise, if it has any value.

8th ques. By whom were you directed to make the stock good?

Ans. The Comptroller of the Currency.

9th ques. In what way did you make good?

Ans. I called in 30 %, and about 1st of Aug. I reported we had currency on hand we had no use for; had the cashier make out a full report of all the bills receivable, showing what were good and what doubtful, and sent to him. The Comptroller did not answer, and I supposed he was satisfied. I ought to explain here, there was a class of bills legally good, they may be good and may not be; that class is kept on the role and reported. Any bills past *one* in process of collection may be counted. We had enough of that class of bills with good bills to make a good bank, to make up the $100,000, but informed the Comptroller and put into the report the information so that he under-

272 stood a part of the bills were not reliable. We informed him sufficiently to know that we had not made up the capital only by a *picture*, including bills in suit, and he had made the order requiring 30 per c't to be paid in, and he made this report after we had performed his order.

10th ques. How long were you president of this bank, and are you still its president?

Ans. I was president from its organization—a sort of ornamental head. I am not pres't now. Con'd until the beginning of this year.

11th ques. When were dividends made last on this stock, and rate?

Ans. July 1st, 1873, 5 % semi-annual.

12th ques. What was the value of the stock of the Mansfield Gas-Light Co. on and before Oct. 1st, 1873.

Ans. I do not know as it had a market value.

13th ques. What was it worth on Oct. 1st, 1873, and for a year prior to that time?

Ans. Do not know. We trusted it all to Mr. Colby. He made a

dividend of 2½ per c't every quarter for a number of years—for several years before. It would be proper to say that for some earlier years we had no dividend. Only can say that when I come to investigate it was not worth more than 40 %. The works were worn out.

14th ques. What is the stock worth now?

Ans. I have heard of persons selling for 60 cts. on the dollar, and have heard of persons selling, for some held as collateral at 75 cts. on the dollar. It is not worth over 40 cts. on the dollar.

15th ques. How much have you been offered for your stock?

273 Ans. There was a man here some time ago wanted to buy a controlling interest in the concern, and I think he offered 60 % or 75 %, and I have forgotten which. I declined selling, for I did not want a foreigner to come in here and control the works. At that time I did not know that rebuilding would be necessary. We have since come to the conclusion we will have to rebuild entirely.

16th ques. Have you not been offered 75 % for it on the dollar?

Ans. I have no recollection of any offer except the conversation with this man, or some member of the board, with reference to this offer. The company were divided in opinion as to what had best better be done. I was opposed to selling; don't recollect the amount of the offer; either 60 cts. or 75 cts.; and if we took it we must make repairs not to exceed a certain number of dollars. Mr. Strong was anxious to have him control the works, and I was not.

17th ques. Are you willing to take 75 cts. now?

Ans. I do not know as I would. I could have taken over par for my bank stock before it burst, but I would not; it a man will offer 75 c. I will answer.

18th ques. What has appreciated the stock since Oct. 1st, 1873?

Ans. Do not know as anything has.

19th ques. Under what circumstance was the stock of the gas co. and Farmers' Nat. B'k, which was held by that bank as collateral on paper of Mr. Colby, sold, and when?

Ans. I can't give dates. When we were notified of the non-payment of that $10,000 for which it was given as collateral, I was advised by gentlemen in Cincinnati, who appeared to be intimate with the

274 officers of the 3d National Bank of Cincinnati, O., that if the bill remained unpaid 14 days would be put in bankruptcy. I do not ——I had sold property to raise the money or not. We could not raise the money. I went to Cincinnati; had the note of the different directors of this bank. The note of 5,000, so signed, and $5,000 expenses, and int. in money paid off the bank at Cincinnati. The note was my note and placed to my credit in the bank. The bank eventually paid it all. The result was I took up the bill and the collateral for the bank and came home, and gave Mr. Colby notice that the bank had paid the bill and requested him to come and take up the collaterals. This notice was given by me as president. After waiting some days—don't know how long—the cashier of bank gave notice that the collaterals would be sold at the north door of the court house, giving more notice than the law requires a sheriff to do who sells personal property. The notice was published in the papers and sent to Mr. Colby; also the stock was sold by the cashier at public auction. Allen B. Beverstock bid off the bank stock, and I bid off the gas stock; the bank stock at 40 % and gas stock at about 41 %. There was some bidding. The sale was about the day of , 1873.

J. PURDY.

Sworn to before me and subscribed in my presence this 13th day of March, 1873.

HENRY C. HEDGES, *Register.*

Testimony of Henry D. Keith.

Also came HENRY D. KEITH, and being first duly sworn according to law, deposes and says that:

275 1st ques. State what official position you held in Richland County on 11th day of June, 1873, and if you still hold some official position.

Ans. I was probate judge, and am still.

2d ques. Please examine the letter of that date attached to the testimony of Mrs. Barbour and say at whose instance it was written.

Ans. To the best of my impression it was written at the instance of A. C. Cummins; there was a præcipe filed for new bond and settlement by A. C. Cummins and Mary N. Cummins July 11th, 1873. The præcipe for new bond and settlement, as Andrew S. Newman, one of the bail, was then deceased. In answer to that summons Colby came in and got a blank bond and returned it executed with his name and Williard S. Hickox as surety. Mrs. Barbour did not, at the same time, file an account.

3d ques. Examine Exhibit B, attached to the testimony of Mrs. Barbour, and state at whose instance it was written, and why so much haste.

Ans. Mrs. Barbour filed a new bond June 16th, 1873, but did not file her acc't; and at Mr. Cummins' suggestion, I think, I wrote this 2d letter; this is my impression, and as it had already been neglected for several weeks I made the time as short as the letter states.

4th ques. Had not the reported failure something to do with requiring the matter to be immediately adjusted?

Ans. What determined Mr. Cummins and his action I cannot say. The fact of there being a financial panic on hand made me more prompt, perhaps, than I otherwise would have been.

H. D. KEITH.

Sworn to before me and subscribed in my presence March 13th, 1875.

HENRY C. HEDGES, *Register.*

276 *Testimony of A. L. Grimes.*

Also came A. L. GRIMES, a witness produced by the plaintiff, being first duly sworn according to law, deposes and says:

1st ques. by L. B. Matson. State whether you loaned H. Colby any money on or prior to Sept. 26th, *of September*, 1873; how much; how evidenced; under what circumstances; how much, if any, has been paid.

Ans. About the 1st of September, 1873, I loaned him $6,000, payable in 30 days, for which he gave me a check on Farmers' Bank, payable in 30 days. I asked him if they wanted any money at the Mansfield Machine Works; his reply was, he did not know, but he would see. In a day or two afterwards, he told me they did not need any, but that he could use it individually. About $1,000 has been paid of it. It was about the middle of August, and not the 1st of September, he got the money. When it became due I was in New England, and it was not paid. I returned 1st or second week in October, 1873, and saw him, and he promised me a little money, and paid me in money about $400 cash, and a

short time afterwards enclosed me, through the mail, notes for about $500 on Jacob Rush, of Kelly's Island.

2d ques. How did you pay Colby the money?

Ans. By a check on the Richland National Bank. Colby did not say what he intended to do with the money, nor how he could use it. At the time he gave me the check he assigned me a certificate for $10,000 stock in the Mansfield Machine Works, as collateral. I told him if
277 I gave him the money I should have it without fail when it came due, and he assured me I should.

3d ques. How was it as to your health for some two years prior to this, as to your ability to give business attention, and to learn of the responsibility of business me', or ability to give the Mansfield Machine Works attention?

Ans. From the summer of 1871 to the fall of 1873 I was either confined home with sickness or travelling for my health in the fall of 1872 and winter of 1872 and '73. I was for 6 months at my home, and not able to be out at all. In summer and fall of 1873 I was away from home most of the time after the failure of this bank.

4th ques. At the time you made this loan and received this stock as collateral, had you a knowledge of the true financial condition of the Mansfield Machine Works?

Ans. I had not.

5th ques. What would you say that the fair market value of the stock of the Mansfield Machine Works was on Oct. 1st, 1873, among those who had a full knowledge of its condition, if any market value?

Ans. I was not here then; had not been for some weeks, but from the state of affairs there was no market value from the disturbed state of finances here.

6th ques. You were secretary at that time, were you not?

Ans. Yes; but did no business at the office; the business was done by the assistant secretary, Nelson Abbott.

7th ques. State whether or not in the month of October, 1873, there was any of said stock offered for sale in this market; if so, at what figures.

Ans. I think Mr. Reese offered his; no one else that I know of; do not know at what figures; we talked off and on, just as it happened;
278 do not remember of his making any price at that time.

8th ques. Did you purchase any; and, if so, when and what was the real cash consideration you paid for same?

Ans. It was after the assignment of the works. I traded with him for $2,500 of the stock. I traded 120 acres of Missouri land for $2,500 of the stock—lands I held at $5.00 per acre; sold some at that figure.

9th ques. Was there any market demand for such land at the time of this exchange?

Ans. I sold the other tracts, 320 acres, about the same time, at about $4.00 per acre, cash.

Cross-examination:

1st ques. by A. K. Dunn. What was the value of the stock of the Mansfield Machine Works prior to the failure of the 1st Nat. Bank of Mansfield, Ohio?

Ans. Very little had changed hands for some time prior to that. The stock was rated by me individually at from 75 c. to $1.00. Don't think there was any price in the market. I considered it good at from 75 c'ts to a dollar.

2d ques. How often did the corporation make dividends?

Ans. Annual dividends until they bought the Blymyer and Co. works, and then passed one year without dividend, and then the next year made a dividend; passed one year without a dividend.

3d ques. When was the last annual dividend made?

Ans. I think it was in December, 1872, at the annual meeting.

4th ques. How much?

279 Ans. (10 %) ten per c't.

5th ques. The Mr. Reese of whom you bought had been the sup't of the works; was an uneasy, fickle kind of a man, wanting to change frequently, and had frequently offered his stock for sale from the time he was in there until he went away, had he not?

Ans. He was superintendent; impulsive, changeable, foreboding evil often, talking of disasters in anticipation as I thought often for talk sake. He sold his stock off at a number of different times during a series of years.

6th ques. In the reorganization of the company after the assignment, Mr. Reese lost his situation as sup't; was anxious to get away from Mansfield, and disposed of all his property to effect that object?

Ans. I think he disposed of his property at a sacrifice; can't say what his object was; he lost his situation; he was not reappointed superintendent.

Redirect:

1st ques. by L. B. Matson. At the time you supposed the stock to be worth the price you have mentioned, to wit, from 75 c. to a dollar, you had no personal knowledge of the financial condition of the works?

Ans. Not at the time named. During the year preceding the failures I had some knowledge, but did not know the extent of the indebtedness; it was much more than I supposed.

2d ques. Did not Mr. Reese oppose the making of the last dividend made, and did not the making of dividend result disastrously for the company?

Ans. My recollection is I was not about the shops for some time before the meeting, and what I learned about the dividend was

280 what I learned from Mr. Colby at my house, and I was at the meeting, and Mr. Reese presented a report of the standing of the company, and showed a surplus considerable more than the dividend amounted to, and he either moved the resolution making the dividend or he seconded the motion. I think the dividend ought not to have been made. Results showed so, that the falling of work almost wholly in the car shops and a large amount of material on hand which was dead, disabled the company from going forward as they had been.

A. L. GRIMES.

Sworn to before me and subscribed in my presence March 13th, 1875.

HENRY C. HEDGES, *Register.*

Testimony of S. B. Sturges.

Also came S. B. STURGES, who, being duly sworn according to law, deposes as follows:

1st ques. by L. B. Matson. What opportunities have you had to become familiar with the price and value of real estate in the city of Mansfield?

Ans. I was born and have lived here the larger part of 48 years; owned and sold considerable real estate, and familiar with a number of transactions between other parties.

2d ques. Give your judg't as to what is the fair market value of the Colby and Geddes block, the Peter Bell farm, and the homestead property of Hubbard Colby, in the city of Mansfield.

Ans. The Colby and Geddes block from 25,000 to 30,000, not less than 25,000, and not over 30,000. The Bell farm, from 120 to 150 per
281 acre. Homestead property not less than $20,000.

3d ques. What were your opportunities of learning the condition and ascertaining the value of the stock of the Mansfield Machine Works, and state its value?

Ans. I was the assignee appointed Nov. 1st, 1873, under the State law, and continued for about 90 days; made an inventory and appraisement of the property, and returned same to the probate judge; was a party to the extension granted by their creditors so far as to release the property of the corporation from the assignment, as will appear by the files and record of the probate court, and have been one of the directors selected by the creditors to represent them; since that time, and after learning all about the condition of the works, would say, if I had money to use in buying such property, I would have been willing to give from 10 to 20 per c't for it on the dollar—the price at which some was offered; and its fair market value I should say was that, though it would not sell for either at that time.

4th ques. State if you had any conversation with the respondent, Allen B. Beverstock, in regard to either of his mortgages; and, if so, when, where, and what did he say?

Ans. I had one or more conversations with him. I remember one Aug. 16th, 1874, in which he said he took the 1st mortgage because Colby gave it to him, on Sept. 26th, 1873, to secure the payment of $10,000—bonds loaned Colby; did not expect or intend to record it, until some days afterwards became alarmed and did so.

5th ques. Were you at home at the time of the failure of the 1st National Bank, Hickox, and McMann; and when did you return, if not at home; and when did you first hear of the reports concerning
282 the financial condition of Hubbard Colby?

Ans. I was in New York City, and not at home; returned, I should say, about 15th of October, 1873; I heard reports concerning the financial condition and embarrassments, which were said to be his own admissions, before I left New York City, which must have been 12th or 13th of October, which were, that Hickox's failure and Colby's liabilities in connection with Hickox would ruin him, Colby.

Cross-examination:

1st ques. by A. K. Dunn, esq. Is your estimate of the value of the real estate, in your examination-in-chief, its value at this date?

Ans. I should think real estate would perhaps sell as well now as then. My estimate is that the real estate ought to have been worth those prices then, though there was then no market for it; I mean Oct. 1st, 1873.

2d ques. Is it worth more or less now than Oct. 1st, 1873?

Ans. The value of it—I would not be able to say that there is a difference in value from what it was then; don't think the value of it is less now than it was then.

3d ques. In your estimation, the financial embarrassments have not effected the value of real estate in Mansfield?

Ans. Not the class of property involved in this case, at the figures named for it.

4th ques. Was this real estate worth as much on Oct. 1st as it was Sept. 25th, 1873?

Ans. I think in 5 days' time there could be but little difference; might not have sold for as much on Oct. 1st if it had been put
283 up at auction; its value, however, could not have been much changed.

5th ques. For what amount is the Colby and Geddes Block rented per annum?

Ans. The net rent of property after paying taxes and ordinary repairs is about $2,600 per annum. I am informed by the other half owner, that is now, and has been since the panic, better rented than usual. And I suppose it pays about 8 % on $30,000, allowing a reasonable charge for leasing and collecting rents.

6th ques. What is the gross sum, without any deduction for taxes, repairs, or non-payments, or charges for coll'n of rents or leases of the property?

Ans. I cannot give the figures without referring to the books.

7th ques. As near as you can give them?

Ans. I cannot with any accuracy, but will get the gross amount and add them.

8th ques. What value, in your estimation, was the stock of the Mansfield Machine Works on Sept. 25th, 1873, estimating it at that time without any knowledge you have acquired since that as to its financial condition and otherwise?

Ans. It is difficult to separate my former opinions as to the value of the stock and those I formed from information I obtained afterward; but, according to the best of my ability, judging from all I knew of it before, and what I had heard of sales of the stock between the officers of company, and from my knowledge of what additions had been made to the capital without money to represent it, I do not think I could have been induced to have paid 30 % for it. I know the Richland National Bank directors took 15,000 of it at par for an uncollectable debt, and charged up 25 % of that as being in excess of what they sup-
284 posed it might be worth, long before the financial troubles were thought of, and since been all charged to profit and loss.

9th ques. How long ago?

Ans. At the 1st annual meeting since the change of the board of directors following the panic January, 1875.

10th ques. During the 90 days the property was in your hands as assignee, were the works running or standing still?

Ans. I took the responsibility, as I understood outside of the law, to complete a few unfinished jobs or machines, and the works were running for that purpose, and none other, a short time, and some hands.

11th ques. What was the amount of the expenses attendant on that assignment?

Ans. I cannot give you the information; it is at the office of the probate judge.

12th ques. What was the amount of your services as assignee?

Ans. I charged such as I was advised in view of the amount involved, the responsibility incurred, and the services rendered. I was justified in making $3,000$^{00}_{100}$. The same labor, or nearly the same, the responsibility, as would have taken in closing the affair up, if not more. The creditors of the concern in many cases calling upon me for explanations, advise as to the extension to be given, prospects of ultimate payment, involving time, attention, and responsibility, it also becoming necessary for me to stand between the company and creditors, holding some $10,000, who would not consent to the terms of the extension.

13th ques. Were you the owner of any stock of the company, or interested in the stock at the time?

285 Ans. I was not the owner of or interested in a dollar of the stock of the Mansfield Machine Works until I became connected with Rich National Bank, in January, 1874, and then only as a stockholder in the Richland National Bank. I am now a director in Mansfield Machine Works, holding one share, which I would be obliged to return to A. L. Grimes in the event that all matters between us were closed.

14th ques. Have you any memorandum of the conversation with A. B. Beverstock, referred to in your answer to the 4th question herein?

Ans. I think I have.

15th ques. Where is it, and what induced the making of——

Ans. It is in a diary of that year. I made it because he had repeated the substance of it to me before. I can procure it, I think.

16th ques. If you have that diary, give the exact memorandum you made.

Ans. A. B. Beverstock told me in Richland Nat'l Bank, sitting near the front, that two or three days after Colby made the first mortgage, in reply to a question from him (B), that he (C) did not know how much of Hickox paper he was on; that that alarmed him, and he then went straight to the recorder's office and put his mortgage on record; before that he did not intend to record the mortgage. "August 16, 1874, S. B."

17th ques. Have you any other memorandum of conversations with Beverstock on the subject of his claims against Colby?

Ans. I don't know of any now.

Ques. How long after this conversation was this memorandum made, and where was it made?

Ans. I think it was made on the same day, at the same place.

286 19th ques. Was it taken with a view to your testifying in this case?

Ans. No, sir; not at the time.

20th ques. Did you have any conversation with Mr. Matson to-day about this conversation, and did you show him the memorandum; if so, when and where?

Ans. I think I made the memorandum to show to him, and showed it to him soon after it was made. I showed him this memoranda *pusm when* and I am not certain but that I showed him the diary to-day; I think I did.

21st ques. Do you not now know, and have you not long known, that Beverstock's mortgages were not recorded until October 9th, 1873, and did you not know this when you had this conversation with him?

Ans. I did not learn that fact until within a few days. I knew it was recorded some days after the execution, but did not know that it was on the 9th.

Ques. What was your understanding as to the time mentioned in your memorandum?

Ans. I understood the two or three days named by him to mean a *sureal*, an indefinite number of days, and not to be taken literally.

S. B. STURGES.

Sworn to before me March 13th, 1875.

HENRY C. HEDGES,
Register.

Further testimony of A. B. Beverstock.

A. B. BEVERSTOCK, being recalled by the counsel of A. B. Beverstock, was further examined, and says on March 17th, 1875:

287 1st ques. by Geo. F. Carpenter, esq. In any conversation you may have had with S. B. Sturges, did you say to him, or intend to convey to him the idea, that two or three days after taking the $10,000 mortgage you had a conversation with Colby relative to his indorsements for Hickox, and say, I became alarmed, and immediately put my mortgage on record.

Ans. I do not recollect of having any conversation whatever with Mr. Sturges on this subject. I am sure I never said to him, or intended to convey any such idea to him, that it was two or three days after I got the $10,000 mortgage, for I did not have any conversation with Colby in regard to his indorsement for Hickox until after I had both mortgages in my possession, and I put them on record, Oct. 9th, 1873.

(The above question and answer are objected to by L. B. Matson, counsel for the pl'tff.)

Cross-examination:

1st ques. by L. B. Matson. Was not the taking of the second mortgage, and the conversation with Colby about his being indorser for Hickox, which alarmed you, one and the same transaction, and at one and the same time?

Ans. It was. I had both mortgages in my hand when I asked him the question; did not get out of my buggy, and drove right straight to the court-house without getting out.

2d ques. Colby was talking to you about his matters; handed you the 2d mortgage previously prepared while you were in the buggy, and continued on the conversation about the subject matter until he told you the subject matter which alarmed you all in one conversation?

Ans. I do not recollect any conversation about his matters particularly. The mortgage was prepared.

288 3d ques. How long a time occurred in the giving of the mortgage and the conversation which alarmed you?

Ans. I do not think I was in the yard more than 5 or 10 minutes.

4th ques. Then he handed you the mortgage previously prepared and you immediately asked him the question, the answer to which alarmed you?

Answer. Yes, sir.

A. B. BEVERSTOCK.

Sworn to before me, and subscribed in my presence March 17th, 1875.

HENRY C. HEDGES,
Register.

(Endorsed:) Filed May 20th, 1875. Chas. H. Bill, dep. clerk.

Afterwards, to wit, on the 22d day of April, A. D. 1878, said defendants filed their bond in appeal in said entitled cause; which said bond is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents, that we, Melissa A. Barbour, and A. K. Dunn, guardian of Maggie Barbour, and May Barbour, as principals, and Henry P. Davis and Abraham C. Cummins, as sureties, are

held and firmly bound unto Stephen B. Priest, assignee of Hubbard Colby, bankrupt, in the sum of one thousand dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 5th day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas the above bounden Melissa A. Barbour and A. K. Dunn, guardian as aforesaid, have appealed to the Supreme Court of
289 the United States from a decree of the circuit court of the United States for the northern district of Ohio, and 6th circuit, bearing date the 8th day of March, A. D. 1878, in a cause wherein the said Stephen B. Priest, assignee as aforesaid, was complainant, and the said Melissa A. Barbour, A. K. Dunn, guardian, and others were respondents:

Now, therefore, the condition of this obligation is such, that if the above-named appellants, Melissa A. Barbour and A. K. Dunn, guardian as aforesaid, shall prosecute their appeal with effect, and pay all such damages, costs, and expenses as shall be awarded against them as such appellant therein, then this obligation to be void, otherwise to remain in full force and effect.

MELISSA A. BARBOUR. [SEAL.]
A. K. DUNN, [SEAL.]
As Guardian of Maggie and Mary Barbour.
N. P. DAVIS. [SEAL.]
A. C. CUMMINS. [SEAL.]

Sealed and delivered in the presence of—
REID CARPENTER.

(Endorsed:) Approved and filed April 22d, 1878. A. J. Ricks, clerk.

THE UNITED STATES OF AMERICA,
Northern District of Ohio:

I, Augustus J. Ricks, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein S. B. Priest, assignee, &c., is the complainant, and Melissa A. Barbour, Eliza B. Kimball, and A. K. Dunn, are the defendants, as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Cleveland, in said district, this day of October, A. D. 1878, and of our Independence the 103d year.

[SEAL.] AUGUSTUS J. RICKS, *Clerk.*

This transcript, $92.30.
Rec'd of H. P. Davis, Oct. 8th, '78.

A. J. RICKS, *Clerk.*

(Indorsement on cover:) No. 250. Melissa A. Barbour, A. K. Dunn, guardian of Maggie Barbour and May Barbour, appellants, vs. Stephen B. Priest, assignee of Hubbard Colby, a bankrupt. N. Ohio, C. C. U. S. Filed 11th October, 1878.